

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/1. LEGISLATIVE FRAMEWORK/301. Outline of the legislative framework.

BUILDING (

1. LEGISLATIVE FRAMEWORK

301. Outline of the legislative framework.

The principal enactment relating to the control of building throughout England and Wales is the Building Act 1984¹, which consolidated various earlier enactments concerning building and buildings and related matters². The Act gives the Secretary of State³ power to make regulations (known as 'building regulations') for any of the purposes of securing the health, safety, welfare and convenience of persons in or about buildings and of others who may be affected by buildings or matters connected with buildings, furthering the conservation of fuel and power, and preventing waste, undue consumption, misuse or contamination of water⁴. In addition to making provision relating to building regulations⁵, the Act provides for the supervision of plans and work by approved inspectors and public bodies⁶. It also contains provisions relating to buildings, including requirements in relation to drainage, the provision of sanitary conveniences, defective premises, demolition and yards and passages⁷.

Building control in London was previously governed by the London Building Acts and byelaws⁸. Although many of these provisions have been repealed and the Building Act 1984 largely applies to inner London⁹, certain aspects of inner London building control are still governed by the London Building Acts, and byelaws may still be made¹⁰. In relation to an area outside inner London, for which there is in force a local Act¹¹ containing provisions that impose an obligation or restriction as to the construction, nature or situation of buildings, the local authority¹² must keep a copy of those provisions at its offices for inspection by the public at all reasonable times free of charge¹³.

Several aspects of building control are outside the scope of the Building Act 1984¹⁴. In particular, separate provision is made for safety at sports grounds¹⁵, and for the safety of stands at sports grounds¹⁶. With the object of preventing fire, there is also regulation of the use of premises where raw celluloid or cinematograph film is kept or stored¹⁷. Further powers in respect of houses which are unfit for human habitation or which are insanitary are conferred by housing legislation¹⁸. Building operations, or the making of any material change in the use of a building, will generally require planning permission¹⁹ in addition to any consent that may be required under regulations²⁰. The construction of buildings over highways maintainable at the public expense is restricted by the Highways Act 1980²¹. The Party Wall etc Act 1996 makes provision in respect of party walls and excavation and construction in proximity to certain buildings or structures²².

1 The Building Act 1984 does not extend to Scotland or to Northern Ireland: s 135(2).

2 The construction of buildings outside inner London, together with the health, safety, welfare and convenience of their inhabitants, was, until the consolidation in 1984, largely governed by the Public Health Act 1936 Pt II (ss 14-90), the Public Health Act 1961 Pt II (ss 4-37) and the Health and Safety at Work etc Act 1974 Pt III (ss 61-76), and by regulations made under them. The building regulation legislation in the Public Health Act 1936 was founded upon local authority byelaws. This method of control was altered by the Public Health Act 1961 to a system of national regulations administered by local authorities (see the Public Health Act 1961 ss 4-11, Sch 1) and, in relation to building regulations, local authorities were given all such functions under the Public Health Act 1936 ss 64, 65 (which conferred power to pass plans and to enforce building byelaws), as they had in relation to building byelaws (see the Public Health Act 1961 s 4(4)). However, the need to meet the

conditions of modern building methods and new and fast-changing types of materials and services resulted in the Health and Safety at Work etc Act 1974 Pt III which substantially revised the main provisions of the legislation of 1936 and 1961, with the addition of various matters of building control and methods of building regulation. The Building Act 1984, which is operative throughout England and Wales, largely consolidated the Public Health Act 1936 Pt II, the Public Health Act 1961 Pt II and the Health and Safety at Work etc Act 1974 Pt III, as well as certain other enactments concerning building and buildings and related matters: see the Building Act 1984 s 133(2), Sch 7. All powers and duties conferred or imposed by the Building Act 1984 are in addition to, and not in derogation of, any other powers and duties conferred or imposed by Act, law or custom, and, subject to any express provision of the Building Act 1984, all such other powers and duties may be exercised and must be performed in the same manner as if that Act had not been passed: s 130. For transitional provisions see s 132, Sch 5 (Sch 5 amended by the Clean Air Act 1993 s 67(3), Sch 6). As to the application of the Building Act 1984 to inner London see para 303 post.

3 In any enactment 'Secretary of State' means one of Her Majesty's principal Secretaries of State: Interpretation Act 1978 s 5, Sch 1. The office of Secretary of State is a unified office, and in law each Secretary of State is capable of performing the functions of all or any of them. As to the office of Secretary of State generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 355.

Many statutory functions previously vested in Ministers of the Crown are now exercisable in relation to Wales by the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended). Functions transferred to the National Assembly for Wales include all functions under the Smoke Detectors Act 1991 (see para 394 post), and certain functions under the Building Act 1984: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1 (as amended). The functions excepted from the transfer include functions under the Building Act 1984 s 1 (see para 306 post), s 2 (see para 310 post), s 3(1) (see para 313 post), s 5(1) (see para 314 post), s 6 (see para 321 post), s 8(2), (3), (6) (see para 315 post), s 9(1) (see para 316 post), s 11 (as amended) (see para 319 post), s 12 (as amended, but not yet in force) (see para 322 post), s 13 (not yet in force) (see para 322 post), s 14 (as amended), s 16(9) (see para 329 post), s 16(10) (so far as it relates to the function of prescribing fees) (see para 329 post), s 17 (see para 330 post) and s 19(7) (see para 331 post), s 20(5) (so far as it relates to the function of prescribing the time and manner of appeals) (see para 332 post), s 20(10) (see para 332 post), s 35 (see para 343 post), s 38(1) (see para 346 post), s 43(3) (see para 351 post), s 44 (see para 312 post), s 47 (as amended) (see para 356 post), s 48 (as amended) (see para 357 post), s 49 (see para 354 post), s 50 (except s 50(2)) (s 50 as amended) (see para 365 post), ss 51-58 (as amended) (see para 366 et seq post), s 92 (see para 418 post), s 120, Sch 1 (as amended) (see para 307 post) and Sch 4 (see para 371 et seq post), and the Treasury function under s 87(4) (see para 405 post): see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1 (item substituted by SI 2000/253). The Treasury approval requirement under the Building Act 1984 s 87(3) continues in effect: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1 (item as so substituted).

As to the establishment, constitution and functions of the National Assembly for Wales see the Government of Wales Act 1998; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to Ministers of the Crown see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 354 et seq. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

4 See the Building Act 1984 s 1; and para 306 ante. As to the power to make building regulations see paras 306, 310 post.

5 See *ibid* Pt I (ss 1-46) (as amended); and para 306 et seq post.

6 See *ibid* Pt II (ss 47-58) (as amended); and para 356 et seq post.

7 See *ibid* Pt III (ss 59-90) (as amended); and para 382 et seq post. As to sewers and drains generally see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARAS 998-1081. As to sanitary conveniences generally see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARAS 987-997.

8 As to the London Building Acts and building control legislation in inner London see para 302 post.

9 See para 302 post. As to the application of the Building Act 1984 to inner London see para 303 post. For the meaning of 'inner London' see para 303 note 10 post.

10 See eg the London Building Acts (Amendment) Act 1939 s 97 (as amended); and the Building Act 1984 ss 1(3), 88 (as amended), Sch 1 para 10; and para 304 post.

11 For the meaning of 'local Act' see para 305 note 2 post.

12 'Local authority' means the council of a district or London borough, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple, the Under Treasurer of the Middle Temple or, for the purposes of the Building Act 1984 Pt I (as amended) (see para 306 et seq post) and Pt II (as amended) (see para 356 et seq post) and Pt IV (ss 91-131) (as amended) (see para 352 et seq post) so far as it relates to them, the Council

of the Isles of Scilly but, in relation to Wales, means the council of a county or county borough: s 126 (definition substituted by the Local Government Act 1985 ss 16, 102(2), Sch 8 para 14(4)(a), Sch 17; and amended by the Local Government (Wales) Act 1994 s 22(3), Sch 9 para 15(3)). As to areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq.

13 See the Building Act 1984 ss 88(1), 90(1), Sch 3 para 5. Any question as to what provisions of a local Act are provisions of which a copy is to be so kept must, on the application of the local authority, be determined by the Secretary of State: s 90(2).

14 See paras 302-304 post.

15 See the Safety of Sports Grounds Act 1975; and para 428 et seq post.

16 See the Fire Safety and Safety of Places of Sport Act 1987 Pt III (ss 26-41) (as amended); and para 440 et seq post.

17 See the Celluloid and Cinematograph Film Act 1922; and para 451 et seq post.

18 See HOUSING vol 22 (2006 Reissue) para 359 et seq. As to the obligations of lessors of small houses see LANDLORD AND TENANT vol 27(1) (2006 Reissue) paras 424-425.

19 See the Town and Country Planning Act 1990 s 55 (as amended), s 57(1); and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) paras 217 et seq, 236.

20 Regulations made under the Town and Country Planning Act 1990 may provide for the combination in a single document, made in such form and transmitted to such authority as may be prescribed, of an application for planning permission in respect of any development and an application required, under any enactment specified in the regulations, to be made to a local authority in respect of that development: see s 332(1); and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) para 449. Applications for planning permission are regulated by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 (as amended): see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) para 252 et seq.

21 See the Highways Act 1980 s 177 (as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) para 359.

22 See BOUNDARIES.

UPDATE

301-305 Legislative Framework

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

301-304 Outline of the legislative framework ... Byelaws for the demolition of buildings in inner London

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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NOTE 2--1984 Act Sch 5 amended: Statute Law (Repeals) Act 2004.

NOTE 3--As to the National Assembly for Wales and the Welsh Assembly government, see Government of Wales Act 2006; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/1. LEGISLATIVE FRAMEWORK/302. The London Building Acts and the application of building control legislation to inner London.

302. The London Building Acts and the application of building control legislation to inner London.

Prior to the reorganisation of local government in Greater London by the London Government Act 1963¹, the area covered by the former London County Council² was subject to the special building control legislation contained in the London Building Acts³. In the reorganisation, the London Government Act 1963 established 12 inner London boroughs and 20 outer London boroughs⁴. It also provides that the relevant provisions of the London Building Acts⁵ continue to apply to the area of the inner London boroughs but that the building control legislation applicable to the other parts of England and Wales⁶, supplemented by certain provisions of the London Building Acts as to streets and dangerous and neglected structures⁷, applies to the area of the outer London boroughs⁸.

The Greater London Council succeeded to the regulatory building control powers of the former London County Council under the London Building Acts⁹, and the London borough councils succeeded to the powers of the former metropolitan borough councils¹⁰. Following the abolition of the Greater London Council on 1 April 1986¹¹, functions of the Greater London Council under the London Building Acts¹² and of district surveyors under those Acts¹³, became (so far as they relate to Greater London other than the outer London boroughs) functions of the councils of the inner London boroughs and the Common Council in respect of their respective areas¹⁴. Functions conferred on the Greater London Council by the London Government Act 1963¹⁵, so far as they related to the outer London boroughs, became functions of the councils of those boroughs in respect of their respective areas¹⁶.

Building works and the construction of buildings in inner London¹⁷, therefore, has historically been largely governed in accordance with the London Building Acts and byelaws made under them. This continued to be the case even after the introduction of the Building Act 1984 (which consolidated earlier building legislation), since many provisions of the Act did not apply to inner London¹⁸. However, regulations made under the Building Act 1984¹⁹ later applied various provisions of the Act²⁰, and other regulations made under it²¹, to inner London. At the same time, any provisions of the London Building Acts or principal byelaws which conflicted or overlapped with the Building Act 1984 or with regulations made under it were repealed or modified²². Most of the Building Act 1984, and the regulations made under it, now apply to inner London, and it is only certain provisions of the London Building Acts legislation which remain in force in relation to inner London²³. These include provisions relating to:

- 1 (1) dangerous and noxious businesses²⁴;
- 2 (2) dwelling houses on low-lying land²⁵;
- 3 (3) the naming and numbering of streets²⁶;
- 4 (4) the construction of buildings²⁷;
- 5 (5) special and temporary buildings and structures²⁸;
- 6 (6) means of escape in a fire²⁹;
- 7 (7) dangerous and neglected structures³⁰;
- 8 (8) superintending architects³¹;
- 9 (9) byelaws³²;
- 10 (10) fees and expenses³³;
- 11 (11) legal proceedings³⁴;
- 12 (12) charges as to London Building Act consents etc³⁵; and
- 13 (13) miscellaneous matters³⁶.

1 le the reorganisation effected by the London Government Act 1963: see LONDON GOVERNMENT vol 29(2) (Reissue) para 4. The area of Greater London comprises the areas of the London boroughs, the City of London, the Inner Temple and the Middle Temple: see s 2(1); and LONDON GOVERNMENT vol 29(2) (Reissue) para 29. As to London boroughs see LONDON GOVERNMENT vol 29(2) (Reissue) para 30.

2 le the area of the former 28 metropolitan boroughs, the City of London and the Temples. As to the establishment of the London County Council see LONDON GOVERNMENT vol 29(2) (Reissue) para 2. The London County Council and the metropolitan borough councils ceased to exist as from 1 April 1965: see *ibid* s 3(1)(b) (repealed).

3 The principal Acts are the London Building Act 1930, the London Building Act (Amendment) Act 1935 and the London Building Acts (Amendment) Act 1939, which may be cited together as the London Building Acts 1930 to 1939: see the London Building Acts (Amendment) Act 1939 s 1, which further provides for those Acts to be construed as one. At 1 April 1965 there were also operative, as building control measures in the London County Council area, the London County Council (General Powers) Act 1954 ss 6, 7; the London County Council (General Powers) Act 1955 ss 5-13; the London County Council (General Powers) Act 1956 s 62; and the London County Council (General Powers) Act 1958 ss 15-17. The London Government Act 1963 s 43 applied (subject to certain modifications) the relevant provisions of all the Acts mentioned *supra* to the respective local authorities in Greater London; and certain additional provisions were enacted in the Greater London Council (General Powers) Act 1965 s 6, the Greater London Council (General Powers) Act 1966 s 22, the Greater London Council (General Powers) (No 2) Act 1978 s 7, and the Greater London Council (General Powers) Act 1982 s 3. By virtue of the Greater London Council (General Powers) (No 2) Act 1978 s 7(5), and the Greater London Council (General Powers) Act 1982 s 3(6), all these Acts may be cited together as the London Building Acts 1930 to 1982.

4 As to the 12 inner London boroughs see the London Government Act 1963 s 1(1)(a), Sch 1 Pt I; and LONDON GOVERNMENT vol 29(2) (Reissue) para 30. Except for a small part of the former metropolitan borough of Woolwich, which was included in the outer London borough of Newham (see s 1(1), Sch 1 Pt I no 17, Pt II para 1), the overall area of the 12 inner London boroughs is that of the former 28 metropolitan borough councils (ie the former London County Council area (see note 3 *supra*)) but without the City of London and the Temples, which were not included in any of the inner London boroughs. As to the 20 outer London boroughs see s 1(1)(b), Sch 1 Pt I; and LONDON GOVERNMENT vol 29(2) (Reissue) para 30.

5 'The relevant provisions of the London Building Acts' means (1) the London Building Acts 1930 to 1939, except certain provisions repealed by the London Government Act 1963 s 43(6) (ie the London Building Act 1930 Pt II (ss 6-21), Pt III (ss 22-32), ss 51-53; the London Building Act (Amendment) Act 1935 s 4(1)(a); and the London Building Acts (Amendment) Act 1939 ss 128-131, s 156, and s 148 so far as it relates to other provisions of the London Building Acts 1930 to 1939 repealed by the London Government Act 1963 s 43(6)); (2) the London County Council (General Powers) Act 1954 s 6 (repealed), s 7, and s 3 so far as it relates to s 6 (repealed), s 7; (3) the London County Council (General Powers) Act 1955 ss 5-13 (as amended), Schs 1, 2 (Sch 2 repealed), and s 3 so far as it relates to ss 5-13 (as amended), Schs 1, 2 (Sch 2 repealed); (4) the London County Council (General Powers) Act 1956 s 62 (repealed); and (5) the London County Council (General Powers) Act 1958 ss 15-17 (as amended), and ss 3, 13, so far as they relate to ss 15-17 (as amended): see the London Government Act 1963 s 43(5)(a)-(e).

6 le any enactments relating to building control and to buildings and structures applied, to any part of Greater London, by *ibid* s 40 (as amended) (see LONDON GOVERNMENT vol 29(2) (Reissue) para 66): see s 43(1). As to building control legislation generally see para 301 *ante*.

7 le the provisions as to the naming and numbering of streets and buildings set out in the London Building Acts (Amendment) Act 1939 Pt II (ss 5-15) (as amended), and the provisions as to dangerous and neglected structures in Pt VII (ss 60-70) (as amended), regulations made under those Parts and any other relevant provisions of the London Building Acts which relate to those Parts: see the London Government Act 1963 s 43(1) (amended by the London Local Authorities Act 2000 s 45(2)).

8 See the London Government Act 1963 ss 40, 43(1), Sch 11 (all as amended). See also LONDON GOVERNMENT vol 29(2) (Reissue) para 66. Section 43(1) is expressed to be subject to any order made under s 84 (as amended) (see LONDON GOVERNMENT vol 29(2) (Reissue) para 9): see s 43(1).

However, the relevant provisions of the London Building Acts, with the exception of the London Building Acts (Amendment) Act 1939 Pt II (ss 5-15) (as amended), do not apply in relation to certain walkways: see the Greater London Council (General Powers) Act 1969 s 26 (amended by the Greater London Council (General Powers) Act 1970 s 11(5); and the Building (Inner London) Regulations 1987, SI 1987/798, reg 3(2), (3), Sch 3 para 3, Sch 4 Pt I). Nothing in the Greater London Council (General Powers) Act 1969 Pt III (ss 9-30) or in any byelaws made under it may prejudice or affect the application to any street, way, place, row of houses, building or block of buildings of the provisions of the London Building Acts (Amendment) Act 1939 Pt II (as amended): see the Greater London Council (General Powers) Act 1969 s 30.

9 See the London Government Act 1963 s 43(1)(a). As to the Greater London Council see LONDON GOVERNMENT vol 29(2) (Reissue) paras 4-5, 33.

10 See *ibid* s 43(1)(b).

11 As to the abolition of the Greater London Council see LONDON GOVERNMENT vol 29(2) (Reissue) paras 5, 33.

12 *Ie* under the London Building Acts 1930 to 1982, including functions conferred on the Greater London Council by the London Government Act 1963 s 43 (as amended) (see the text and notes 1-10 *supra*): see the Local Government Act 1985 s 16, Sch 8 para 14(1).

13 The London Building Acts were supervised by the district surveyors, appointed in inner London for that purpose by the Greater London Council under the London Building Act (Amendment) Act 1939 s 75(1). However, s 75 was repealed by the Local Government Reorganisation (Miscellaneous Provision) (No 4) Order 1986, SI 1986/452, art 3, Sch 3 Pt I, and the office of district surveyor no longer exists. His functions were transferred to the inner London borough councils and the Common Council of the City of London by the Local Government Act 1985 s 16, Sch 8 para 14(1). See also the London Building Acts (Amendment) Act 1939 s 82, 87-90 (ss 82, 88, 90 amended by the Building (Inner London) Regulations 1985, SI 1985/1936, regs 3(2), 4, Sch 4); and the London County Council (General Powers) Act 1958 s 17 which made provision as to duties of district surveyors and the building notices, notices of objection and notices of irregularity served by them. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) paras 51-55.

14 Local Government Act 1985 Sch 8 para 14(1).

15 *Ie* by the London Government Act 1963 s 43 (as amended): see the text and notes 1-10 *supra*.

16 Local Government Act 1985 Sch 8 para 14(2).

17 The term 'building' is not defined for the purposes of the London Building Acts and, accordingly, the meaning of 'building' has been developed over a long period of years by common law decisions. Some of the decisions, dating back to the first half of the nineteenth century or, in some cases, much later, were reached in building conditions and under legislation far removed from present techniques, policies and controls. Those cases which appear no longer relevant have not, therefore, been included, however, it cannot be certain that all of the cases cited *infra* would be decided now as they were under the conditions and legislation of the time of decision. See *Stevens v Gourley* (1859) 7 CBNS 99; *Brown v Holyhead Local Board of Health* (1862) 7 LT 332; *Clark v St Pancras Vestry* (1869) 34 JP 181; *Pocock v Gilham* (1883) 1 Cab & El 104; *Richardson v Brown* (1885) 49 JP 661, DC; *Slaughter v Sunderland Corpn* (1891) 60 LJM 91, DC; *Moir v Williams* [1892] 1 QB 264, CA; *Foster v Fraser* [1893] 3 Ch 158; *Walker v Baildon Local Board* (1893) 37 Sol Jo 217, DC; *Wood v Cooper* [1894] 3 Ch 671; *Lavy v LCC* [1895] 2 QB 577, CA; *South Shields Corpn v Wilson Bros* (1901) 84 LT 267, DC; *Long Eaton Recreation Grounds Co v Midland Rly Co* [1902] 2 KB 574, CA; *Hanrahan v Leigh-on-Sea UDC* [1909] 2 KB 257, CA; *James v Tudor* (1912) 77 JP 130, DC; *Stevens v Willing & Co Ltd* (1929) 167 LT Jo 178; *Gumbrell v Swale RDC* [1936] 3 All ER 935; *Super Sites Ltd v Keen* [1938] 2 All ER 471, DC; *Urban Housing Co Ltd v Oxford City Council* [1940] 1 Ch 70, [1939] 4 All ER 211, CA. As to the meaning of 'structure' see *Venner v McDonell* [1897] 1 QB 421 at 426, DC, per Wills J; *Whitechapel Board of Works v Crow* (1901) 84 LT 595, DC; *Westminster City Council v LCC* [1902] 1 KB 326, DC; *Charing Cross and Strand Electricity Supply Corpn v Woodthorpe* (1903) 88 LT 772, DC; *Handover v Meeson* (1903) 67 JP 313, DC; *County of London Electric Supply Co v Perkins* (1908) 72 JP 133, DC; *Moran & Son Ltd v Marsland* [1909] 1 KB 744, DC; *Daubney v Angel* (1912) 77 JP Jo 5; *LCC v Tann* [1954] 1 All ER 389, [1954] 1 WLR 371, DC; *Thomas v Benjamin Scaffolding Contracts Ltd* (1980) 79 LGR 702, (1980) 125 Sol Jo 200, DC. As to the meaning of 'building or structure' see *St George's Vestry v Sparrow* (1864) 16 CBNS 209; *Ellis v Plumstead Board of Works* (1893) 68 LT 291, DC; *Wendon v LCC* [1894] 1 QB 812, CA; *Coburg Hotel v LCC* (1899) 81 LT 450, DC; *LCC v Illuminated Advertisements Co* [1904] 2 KB 886, DC; *LCC v Hancock and James* [1907] 2 KB 45, DC; *A and F Pears Ltd v LCC* (1911) 75 JP 461, DC; *Lavy v LCC* *supra*.

18 The provisions of the Building Act 1984 which did not apply to inner London when the Building Act 1984 was introduced were listed in ss 46, 88, 91(2), Sch 3 (as originally enacted). For the meaning of 'inner London' see para 303 note 10 *post*.

19 *Ie* the Building (Inner London) Regulations 1985, SI 1985/1936 (amended by SI 1986/452; SI 1987/798; SI 1991/2768; and SI 2000/2532); and the Building (Inner London) Regulations 1987, SI 1987/798 (amended by SI 1991/2768; and SI 2000/2532).

20 As to the application of the Building Act 1984 to inner London see para 303 *post*.

21 The Building Regulations 1985, SI 1985/1065, the Building (Approved Inspectors etc) Regulations 1985, SI 1985/1066, and the Building (Prescribed Fees etc) Regulations 1985, SI 1985/1576, which had all expressly provided that they did not apply to inner London, were made to apply fully in inner London by the Building (Inner London) Regulations 1985, SI 1985/1936, and the Building (Inner London) Regulations 1987, SI 1987/798.

The Building Regulations 1985, SI 1985/1065, the Building (Approved Inspectors etc) Regulations 1985, SI 1985/1066, and the Building (Prescribed Fees etc) Regulations 1985, SI 1985/1576, have all been revoked and replaced: see now the Building Regulations 2000, SI 2000/2531 (as amended); the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532 (as amended); and the Building (Local Authority Charges) Regulations 1998, SI 1998/3129, none of which state that they do not apply to Inner London.

22 See the Building (Inner London) Regulations 1985, SI 1985/1936 (as amended); the Building (Inner London) Regulations 1987, SI 1987/798 (as amended); and note 19 *supra*. As to the power of building regulations to repeal or modify certain Acts in relation to inner London see also the Building Act 1984 Sch 3 para 3; and para 303 *post*.

23 The London Building Acts, being local Acts, are not reproduced in detail in this work.

24 See the London Building Act 1930 Pt XI (ss 143-145) (as amended).

25 See *ibid* Pt XII (ss 146-148) (as amended).

26 See the London Building Acts (Amendment) Act 1939 Pt II (ss 5-15) (as amended).

27 See the London Building Act (Amendment) Act 1935 s 3 (as amended); and the London Building Acts (Amendment) Act 1939 Pt III (ss 20-21) (as amended).

28 See *ibid* Pt IV (ss 29-31) (as amended).

29 See *ibid* Pt V (ss 33-43) (as amended). See also the Greater London Council (General Powers) Act 1966 s 22 (as amended).

30 See the London Building Acts (Amendment) Act 1939 Pt VII (ss 60-70) (as amended); the London County Council (General Powers) Act 1955 ss 5-9; the London County Council (General Powers) Act 1958 ss 3(1), 13(2), 15-16.

31 See the London Building Acts (Amendment) Act 1939 ss 73-74 (as amended).

32 See the London Building Act (Amendment) Act 1935 s 8 (as amended); and the London Building Acts (Amendment) Act 1939 Pt X (s 97) (as amended).

33 See the London Building Act (Amendment) Act 1935 s 14 (as amended); the London Building Acts (Amendment) Act 1939 s 91 (as amended), s 94 (as amended), s 95, s 96 (as amended).

34 See the London Building Acts (Amendment) Act 1939 Pt XI (ss 101-126) (as amended).

35 See the Greater London Council (General Powers) Act 1982 s 3.

36 See the London Building Acts (Amendment) Act 1939 Pt XII (ss 132-157) (as amended).

UPDATE

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Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

301-304 Outline of the legislative framework ... Byelaws for the demolition of buildings in inner London

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

302 The London Building Acts and the application of building control legislation to inner London

NOTE 21--SI 1998/3129 amended: SI 2004/533.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/1. LEGISLATIVE FRAMEWORK/303. Application of the Building Act 1984 to inner London.

303. Application of the Building Act 1984 to inner London.

Certain provisions of the Building Act 1984 relating to:

- 14 (1) the provision of exits¹;
- 15 (2) the provision of water supply²;
- 16 (3) the requirements for entrances and exits in certain cases³;
- 17 (4) means of escape from fire⁴;
- 18 (5) the raising of chimneys⁵;
- 19 (6) cellars and rooms under subsoil water level⁶;
- 20 (7) dangerous buildings⁷;
- 21 (8) the maintenance of entrances to courtyards⁸; and
- 22 (9) facilities for inspecting local Acts⁹,

do not apply to inner London¹⁰. In addition, the provisions relating to the drainage of buildings, the use and ventilation of soil pipes and the repair of drains¹¹ do not apply to the Inner Temple or the Middle Temple¹². Further, the provisions of Part IV of the Building Act 1984¹³ do not apply in relation to the power¹⁴ of the council of an inner London borough to make byelaws in relation to the demolition of buildings in the borough¹⁵.

Where¹⁶ local authorities¹⁷, or a prescribed¹⁸ person or class of persons other than local authorities, are made responsible for enforcing, or performing prescribed functions¹⁹ under or in connection with, building regulations in force in inner London, then²⁰ building regulations may in that connection provide for any relevant provision²¹ of the Building Act 1984 to apply²² in relation to any such authority, person or class of persons as that provision applies in relation to a local authority outside inner London²³.

Building regulations may²⁴ repeal or modify any provision of:

- 23 (a) the London Building Acts 1930 to 1939²⁵;
- 24 (b) an Act passed before 20 September 1974, in so far as that provision applies to or to any part of inner London, and relates to, or to the making of, byelaws for or for any part of inner London with respect to any matter for or in connection with which provision can be made by building regulations²⁶; or
- 25 (c) byelaws made or having effect under the said Acts or of any such byelaws as are mentioned in head (b) above²⁷,

if it appears to the Secretary of State²⁸ that the repeal or, as the case may be, the modification of that provision is expedient:

- 26 (i) in consequence of the application²⁹ of certain provisions of the Public Health Act 1936³⁰, the Public Health Act 1961³¹ and the Health and Safety at Work etc Act 1974³² to inner London³³;
- 27 (ii) in consequence of certain provisions³⁴ of the Building Act 1984³⁵; or
- 28 (iii) in connection with any provision contained in building regulations that apply to or to any part of inner London³⁶.

Before making any building regulations that provide for the repeal or modification of any such provision the Secretary of State must³⁷ consult any local authority which appears to him to be concerned³⁸.

- 1 Ie the Building Act 1984 s 24(1), (2), (4): see para 336 post.
- 2 Ie ibid s 25 (as amended): see para 337 post.
- 3 Ie ibid s 71: see para 393 post.
- 4 Ie ibid s 72(1), (4), (6), (7): see para 394 post.
- 5 Ie ibid s 73: see para 395 post.
- 6 Ie ibid ss 74, 75: see para 396 post.
- 7 Ie ibid ss 77-83 (as amended): see paras 398-401 post.
- 8 Ie ibid s 85: see para 403 post.
- 9 Ie ibid s 90: see para 301 ante.
- 10 Ibid ss 46, 88, Sch 3 para 1 (amended by the Building (Inner London) Regulations 1985, SI 1985/1936, reg 3, Sch 3 para 20, Sch 4; and the Building (Inner London) Regulations 1987, SI 1987/798, reg 3(3), Sch 4 Pt I), Building Act 1984 Sch 3 para 5 (amended by the Building (Inner London) Regulations 1987, SI 1987/798, regs 2(3), 4). 'Inner London' means the area comprising the inner London boroughs, the City of London, the Inner Temple and the Middle Temple: Building Act 1984 s 126.
- 11 Ie ibid ss 59-61 (as amended): see paras 382-384 post.
- 12 Ibid Sch 3 para 6.
- 13 Ie ibid Pt IV (ss 91-131) (as amended).
- 14 Ie the power under ibid Sch 3 Pt IV (as amended): see para 304 post.
- 15 See ibid s 131, Sch 3 para 13 (amended by the Building (Inner London) Regulations 1987, SI 1987/798, reg 3(3), Sch 4 Pt I).
- 16 Ie by the Building Act 1984 s 91(2) (as amended) (see para 352 post) or by building regulations made under s 1(3), Sch 1 para 6 (see para 307 post), or Sch 3 para 14(1) (repealed): see Sch 3 para 2(1). For the meaning of 'building regulations' see para 306 post.
- 17 For the meaning of 'local authority' see para 301 note 12 ante.
- 18 Ie prescribed by building regulations: see the Building Act 1984 s 126.
- 19 'Functions' includes powers and duties: ibid s 126.
- 20 Ie without prejudice to ibid Sch 1 para 6 (see para 307 post) and Sch 3 para 14(1) (repealed).
- 21 For these purposes, 'relevant provision' means any of the following provisions of the Building Act 1984 that may be prescribed for the purposes of Sch 3 para 2(1): s 4 (as amended) (see para 313 post), ss 8-10 (see paras 315-318 post), s 16 (as amended) (see para 329 post), s 18(1), (4), (5) (s 18 repealed), ss 21-23 (as amended) (see paras 333-335 post), s 24(1), (2), (4) (see para 336 post), ss 26-29 (repealed with savings), s 32 (see para 339 post), s 36 (see para 344 post), s 37 (see para 345 post), s 39 (see para 347 post), and s 40 (see para 348 post): Sch 3 para 2(2).
- 22 Ie with any prescribed modifications, and notwithstanding ibid Sch 3 para 1 (see the text and notes 1-10 supra): see Sch 3 para 2(1). 'Modifications' includes additions, omissions and amendments, and related expressions must be construed accordingly: s 126.
- 23 Ibid Sch 3 para 2(1).
- 24 Ie without prejudice to the generality of ibid Sch 1 para 11(1) (as amended) (see para 307 post): see Sch 3 para 3.

25 Ibid Sch 3 para 3(a). The text refers to the London Building Act 1930, the London Building Act (Amendment) Act 1935, and the London Building Acts (Amendment) Act 1939. See further para 302 ante.

26 Building Act 1984 Sch 3 para 3(b).

27 Ibid Sch 3 para 3(c).

28 As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

29 Ie by virtue of the Health and Safety at Work etc Act 1974 s 70(1) (which section is repealed by and incorporated in the Building Act 1984: see now Sch 5 para 5).

30 Ie any of the Public Health Act 1936 ss 61, 62, 67 (all repealed).

31 Ie any of the Public Health Act 1961 ss 4(2), (5), (6), (7), 5, 9 (all repealed).

32 Ie any of the Health and Safety at Work etc Act 1974 ss 61-74, 76 (all repealed).

33 Building Act 1984 Sch 3 para 3(i).

34 Ie ibid Sch 3 para 2 (see the text and notes 16-23 supra) or Sch 3 para 14 (repealed).

35 Ibid Sch 3 para 3(ii).

36 Ibid Sch 3 para 3(iii).

37 Ie without prejudice to the requirements as to consultation in ibid s 14(3): see para 311 post.

38 Ibid Sch 3 para 4 (amended by the Local Government Act 1985 s 16, Sch 8 para 14(4)(b)(i)).

UPDATE

301-305 Legislative Framework

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

301-304 Outline of the legislative framework ... Byelaws for the demolition of buildings in inner London

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/1. LEGISLATIVE FRAMEWORK/304. Byelaws for the demolition of buildings in inner London.

304. Byelaws for the demolition of buildings in inner London.

Provision is made by the Building Act 1984¹ with respect to the making of byelaws for the inner London² boroughs, with respect to certain matters, and for the inner London boroughs, the Inner Temple and the Middle Temple, with respect to certain other matters³. The council of an inner London borough may make byelaws in relation to the demolition of buildings in the borough⁴:

- 29 (1) requiring the fixing of fans at the level of each floor of a building undergoing demolition⁵;
- 30 (2) requiring the hoarding up of windows in a building from which sashes and glass have been removed⁶;
- 31 (3) regulating the demolition of internal parts of buildings before any external walls are taken down⁷;
- 32 (4) requiring the placing of screens or mats, the use of water or the taking of other precautions to prevent nuisances arising from dust⁸;
- 33 (5) regulating the hours during which ceilings may be broken down and mortar may be shot, or be allowed to fall, into any lower floor⁹;
- 34 (6) requiring any person proposing to demolish a building to give to the borough council such notice of his intention to do so as may be specified in the byelaws¹⁰.

Such byelaws may make different provision for different cases, and in particular may provide that, in their application to an area specified in the byelaws, the byelaws have effect subject to such modifications¹¹ or exceptions as may be so specified¹². No such byelaws may apply to a building (not being a dwelling-house) belonging to a board carrying on a railway undertaking and used by that board as a part of, or in connection with, that undertaking¹³.

1. See by the Building Act 1984 s 88(3) (as amended), Sch 3 Pt IV (paras 10-13) (as amended): see the text and notes 2-13 *infra*. The provisions of Pt IV (ss 91-131) (as amended) (general matters: see para 352 *et seq post*) do not apply in relation to Sch 3 Pt IV (as amended): see s 131, Sch 3 para 13 (amended by the Building (Inner London) Regulations 1987, SI 1987/798, reg 3(3), Sch 4 Pt I).

2. For the meaning of 'inner London' see para 303 note 10 *ante*.

3. Building Act 1984 s 88(3) (amended by the Local Government Act 1985 s 102(2), Sch 17).

4. Building Act 1984 Sch 3 para 10(1) (amended by the Local Government Act 1985 s 16, Sch 8 para 14(4)(b) (ii)). As to the making of building regulations to modify or repeal the provisions of the Building Act 1984 Sch 3 Pt IV (as amended) (byelaws) on the ground of inconsistency with other provisions see s 1(3), Sch 1 para 11(1); and para 307 *post*.

5. *Ibid* Sch 3 para 10(1)(a).

6. *Ibid* Sch 3 para 10(1)(b).

7. *Ibid* Sch 3 para 10(1)(c).

8. *Ibid* Sch 3 para 10(1)(d).

9. *Ibid* Sch 3 para 10(1)(e).

10. *Ibid* Sch 3 para 10(1)(f).

11 As to the meaning of 'modifications' see para 303 note 22 ante.

12 Building Act 1984 Sch 3 para 10(2).

13 Ibid Sch 3 para 10(3).

UPDATE

301-305 Legislative Framework

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

301-304 Outline of the legislative framework ... Byelaws for the demolition of buildings in inner London

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/1. LEGISLATIVE FRAMEWORK/305. Meaning of 'building'.

305. Meaning of 'building'.

For the purposes of Part I of the Building Act 1984¹ and any other enactment², whether or not contained in that Act, that relates to building regulations³, or that mentions 'buildings' or 'a building' in a context from which it appears that those expressions are there intended to have the same meaning as in Part I of the Building Act 1984, means any permanent or temporary building, and, unless the context otherwise requires, it includes any other structure or erection⁴ of whatever kind or nature, whether permanent or temporary⁵. For these purposes, unless the context otherwise requires: (1) a reference to a building includes a reference to part of a building⁶; and (2) a reference to the provision of services, fittings and equipment in or in connection with buildings, or to services, fittings and equipment so provided, includes a reference to the affixing of things to buildings or, as the case may be, to things so affixed⁷.

1 The Building Act 1984 Pt I (ss 1-46): see para 306 et seq post.

2 'Enactment' includes an enactment contained in a local Act: *ibid* s 126. 'Local Act' includes a provisional order confirmed by Parliament, and the confirming Act so far as it relates to that order: s 126. 'Act' includes an enactment contained in a local Act: s 126.

3 For the meaning of 'building regulations' see para 306 post.

4 For these purposes, 'structure or erection' includes a vehicle, vessel, hovercraft, aircraft or other movable object of any kind in such circumstances as may be prescribed, being circumstances that in the opinion of the Secretary of State justify treating it for those purposes as a building: *ibid* s 121(2). 'Prescribed' means prescribed by building regulations: see s 126. As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

5 *Ibid* s 121(1). As to the classification of buildings for the purposes of building regulations see para 306 post. The building regulations apply only to 'buildings'; walls and bridges that are not part of a building are not 'a building' for purposes of the regulations. Each structure in a development must be looked at separately in order to see whether the building regulations apply to it: *Seabrink Residents Association Ltd v Robert Walpole Campion & Partners (a firm)* (1988) 14 ConLR 62. As to whether a bus and a lorry constitute 'temporary' buildings see: *Gumbrell v Swale RDC* [1936] 3 All ER 935.

6 Building Act 1984 s 121(3)(a). Under previous legislation, a neon installation was held to be not part of a building but is something on a building and, accordingly, the regulations did not apply: *Price v Claudgen Ltd* [1967] 1 All ER 695, [1967] 1 WLR 575, HL.

7 Building Act 1984 s 121(3)(b).

UPDATE

301-305 Legislative Framework

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(1) IN GENERAL/306. Power to make building regulations.

2. BUILDING REGULATIONS

(1) IN GENERAL

306. Power to make building regulations.

The Secretary of State¹ may, for any of the purposes of:

- 35 (1) securing the health, safety, welfare and convenience of persons in or about buildings² and of others who may be affected by buildings or matters connected with buildings³;
- 36 (2) furthering the conservation of fuel and power⁴; and
- 37 (3) preventing waste, undue consumption, misuse or contamination of water⁵,

make regulations⁶ with respect to the design and construction of buildings and the provision of services, fittings and equipment in or in connection with buildings⁷. Such regulations are known as building regulations⁸. The power to make building regulations is exercisable by statutory instrument, which is subject to annulment in pursuance of a resolution of either House of Parliament⁹.

For the purposes of building regulations and of a direction given or instrument made with reference to building regulations, buildings may be classified by reference to size, description, design, purpose, location or any other characteristic whatsoever¹⁰.

1 As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

2 For the meaning of 'building' see para 305 ante.

3 Building Act 1984 s 1(1)(a).

4 Ibid s 1(1)(b).

5 Ibid s 1(1)(c).

6 In exercise of this power the following regulations have been made: the Building (Inner London) Regulations 1985, SI 1985/1936 (amended by SI 1985/1066; SI 1986/452; SI 1987/798; and SI 1991/2768); the Building (Inner London) Regulations 1987, SI 1987/798 (amended by SI 1991/2768; and SI 1985/1066); the Building (Local Authority Charges) Regulations 1998, SI 1998/3129; the Building Regulations 2000, SI 2000/2531 (amended by SI 2001/3335; and SI 2002/440); and the Building (Approved Inspectors etc) Regulations 2000/2532 (amended by SI 2001/3336).

It is appropriate to draw a distinction between the regulations the purpose of which is to prevent damage to the health, safety or welfare of persons and regulations the purpose of which is to prevent damage to property. The statutory regime of the Building Act 1984 and the Building Regulations 1985, SI 1985/1065 (now repealed) was concerned with the health, safety and welfare of persons, but had no purpose referable to the protection of property or chattels. It has been held that even where the purpose of the statutory regime under the Building Act 1984 is concerned with avoiding damage to property, it was not fair, just or reasonable to impose a duty of care at common law on the council: *Tesco Stores Ltd v Wards Construction (Investment) Ltd* (1995) 76 BLR 94. 'The Building Act 1984 replaced the previous system of local byelaws with nationally applicable regulations made by the Secretary of State': *Southwark London Borough Council v Tanner* [2001] 1 AC 1 at 9, sub nom *Southwark London Borough Council v Mills* [1999] 4 All ER 449 at 454, HL, per Lord Hoffmann.

7 Building Act 1984 s 1(1). As to consultation before building regulations are made see para 311 post.

8 Ibid ss 1(2), 122(a). A reference to building regulations, in a particular case in relation to which a requirement of building regulations is for the time being dispensed with, waived, relaxed or modified by virtue of s 8 (see para 315 post) or s 11 (as amended) (see para 319 post) or any other enactment, is a reference to building regulations as they apply in that case, unless the context otherwise requires: s 122(b). As to the application of building regulations to the Crown see para 312 post.

For any reference to building byelaws as defined in the Public Health Act 1936 s 343, or byelaws made under Pt II with respect to buildings, works and fittings, that occurs in an Act, or in an instrument having effect under an Act, there is substituted a reference to building regulations: Building Act 1984 s 89(1). References to byelaws include 'exemptions and savings' under earlier building legislation: see eg *Tanner v Oldman* [1896] 1 QB 60, DC.

9 Building Act 1984 s 1(4).

10 Ibid s 34.

UPDATE

306-324 Power to make building regulations ... Particulars and plans where a building notice is given

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

306-307 Power to make building regulations ... Subject matter of building regulations

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

306 Power to make building regulations

TEXT AND NOTES--In making building regulations the Secretary of State must have regard, in particular, to the desirability of preserving the character of protected buildings that are of special historical or architectural interest: 1984 Act s 1A(1) (s 1A added by the Sustainable and Secure Buildings Act 2004 s 2). For these purposes 'protected buildings' means (1) listed buildings within the meaning of the Planning (Listed Buildings and Conservation Areas) Act 1990 (see s 1(5); and TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1077); and (2) buildings situated in areas designated as conservation areas under s 69 (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1169): 1984 Act s 1A(2) (s 1A as added). See *R (on the application of Actis Sa) v Secretary of State for Communities and Local Government* [2007] EWHC 2417 (Admin), [2007] All ER (D) 30 (Nov) (Secretary of State should have notified revised documents: they constituted a de facto technical regulation).

TEXT AND NOTES 4, 5, 7--Replaced. Now, heads (2) furthering the conservation of fuel and power; (3) preventing waste, undue consumption, misuse or contamination of water; (4) furthering the protection or enhancement of the environment; (5) facilitating sustainable development; or (6) furthering the prevention or detection of crime, make regulations with respect to the design and construction matters mentioned in the 1984 Act s 1(1A): s 1(1)(b)-(f) (s 1(1)(b), (c) substituted, s 1(1)(d)-(f) added, by the 2004 Act s 1(1), (2)). Those matters are (a) the design and construction of buildings; (b) the

demolition of buildings; (c) services, fittings and equipment provided in or in connection with buildings: 1984 Act s 1(1A) (added by the 2004 Act s 1(3)).

The Secretary of State must now prepare a report every two years on progress during the period in connection with the purposes mentioned in the 1984 Act s 1(1)(b)-(e) in the context of the building stock in England and Wales: see the 2004 Act s 6; and PARA 306A.

NOTE 6--SI 1998/3129 amended: SI 2004/533. SI 2000/2531 further amended: SI 2006/652, SI 2006/3318, SI 2008/671, SI 2008/2334, SI 2009/466. SI 2000/2532 further amended: SI 2004/1466, SI 2006/652, SI 2006/3318, SI 2008/2334.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(1) IN GENERAL/306A. Secretary of State to report on building stock.

306A. Secretary of State to report on building stock.

The Secretary of State must, for the period of two years beginning from 16 November 2004¹, and for each succeeding period of two years, prepare a report on progress during the period in connection with the following purposes² in the context of the building stock in England and Wales: (1) furthering the conservation of fuel and power; (2) preventing waste, undue consumption, misuse or contamination of water; (3) protecting the environment; or (4) facilitating sustainable development³. Such a report must, in particular, deal with:

- 38 (a) building regulations made during the period for any of those purposes⁴;
- 39 (b) proposals current at the end of the period to make building regulations for any of those purposes⁵;
- 40 (c) effects or likely effects of regulations or proposals dealt with in the report under heads (a) and (b) above⁶;
- 41 (d) proposals considered by the Secretary of State during the period for the setting of targets for any of those purposes in relation to:
 - 1 (i) buildings in England and Wales; or
 - 2 (ii) services, fittings or equipment provided in or in connection with such buildings⁷;
- 42 (e) overall changes during the period in:
 - 3 (i) the efficiency with which energy is used in buildings in England and Wales;
 - 4 (ii) levels of emissions from such buildings that are emissions considered by the Secretary of State to contribute to climate change;
 - 5 (iii) the extent to which such buildings have their own facilities for generating energy;
 - 6 (iv) the extent to which materials used in constructing, or carrying out works in relation to, such buildings are recycled or re-used materials⁸.

The report must contain an estimate, as at the end of the period, of the number of dwellings in England and Wales⁹.

- 1 Ie the date on which the Sustainable and Secure Buildings Act 2004 s 6 came into force: see s 11(4).
- 2 Ie in connection with the purposes mentioned in the Building Act 1984 s 1(1)(b)-(e) (as substituted: see PARA 306).
- 3 See the 2004 Act s 6(1).
- 4 Ibid s 6(2)(a).
- 5 Ibid s 6(2)(b).
- 6 Ibid s 6(2)(c).
- 7 Ibid s 6(2)(d).
- 8 Ibid s 6(2)(e).

9 Ibid s 6(3). The Secretary of State must lay before Parliament each report he prepares under this provision: s 6(4).

UPDATE

306-324 Power to make building regulations ... Particulars and plans where a building notice is given

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

306-307 Power to make building regulations ... Subject matter of building regulations

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(1) IN GENERAL/307. Subject matter of building regulations.

307. Subject matter of building regulations.

Building regulations¹ may provide for particular requirements of the regulations to be deemed to be complied with where prescribed² methods of construction³, prescribed types of materials or other prescribed means are used in or in connection with buildings⁴. Building regulations may be framed to any extent by reference to a document published by or on behalf of the Secretary of State⁵ or another person or a body, or by reference to the approval or satisfaction of a prescribed person or body⁶.

Building regulations may include provision as to the giving of notices⁷, the deposit of plans⁸ of proposed work or work already executed (including provision as to the number of copies to be deposited)⁹, the retention by local authorities¹⁰ of copies of plans deposited with them in accordance with the regulations¹¹, the inspection and testing of work¹², and the taking of samples¹³. Building regulations may provide for requiring local authorities and approved inspectors¹⁴ in prescribed circumstances to consult a prescribed person before taking a prescribed step in connection with any work or other matter to which building regulations are applicable¹⁵. Building regulations may:

- 43 (1) authorise local authorities to accept, as evidence that the requirements of building regulations as to matters of a prescribed description are or would be satisfied, certificates¹⁶ to that effect by persons of a class or description prescribed in relation to those matters or by a person nominated in writing by the Secretary of State in a particular case¹⁷;
 - 44 (2) provide for the issue by local authorities of certificates to the effect that, so far as the authority concerned has been able to ascertain after taking all reasonable steps in that behalf, the requirements of building regulations as to matters of a prescribed description are satisfied in a particular case, and for such certificates to be evidence (but not conclusive evidence) of compliance with the regulations¹⁸;
 - 45 (3) make provision:
- 5
7. (a) for prohibiting, in prescribed circumstances, the carrying out of proposed work of a prescribed class involving matters of a prescribed description unless there has been deposited with the prescribed authority as regards those matters a certificate such as is mentioned in head (1) above¹⁹;
 8. (b) for enabling, in the cases where such a certificate is required by virtue of head (a) above, a dispute as to whether a certificate ought to be issued to be referred to the Secretary of State²⁰;
 9. (c) for enabling the Secretary of State, on such a reference, to give such directions as he thinks fit²¹.

6

Building regulations may authorise local authorities to charge prescribed fees for or in connection with the performance of prescribed functions²² of theirs relating to building regulations²³. Building regulations may make a prescribed person or class of persons responsible (instead of local authorities) for performing prescribed functions of local authorities under or in connection with building regulations, and for that purpose may provide for a prescribed enactment relating to building regulations and a prescribed provision of such regulations to apply (with any prescribed modifications²⁴) in relation to a prescribed person or a

person of a prescribed class as that enactment or provision applies in relation to a local authority²⁵.

Building regulations may²⁶, for any of the purposes for which building regulations may be made²⁷, make provision with respect to any of the following matters:

- 46 (i) preparation of sites²⁸;
- 47 (ii) suitability, durability and use of materials and components, including surface finishes²⁹;
- 48 (iii) structural strength and stability, including precautions against overloading, impact and explosion³⁰, measures to safeguard adjacent buildings and services³¹, and underpinning³²;
- 49 (iv) fire precautions, including structural measures to resist the outbreak and spread of fire and to mitigate its effects³³, services, fittings and equipment designed to mitigate the effects of fire or to facilitate fire-fighting³⁴, means of escape in case of fire and means for securing that such means of escape can be safely and effectively used at all material times³⁵;
- 50 (v) resistance to moisture and decay³⁶;
- 51 (vi) measures affecting the transmission of heat³⁷;
- 52 (vii) measures affecting the transmission of sound³⁸;
- 53 (viii) measures to prevent infestation³⁹;
- 54 (ix) measures affecting the emission of smoke, gases, fumes, grit or dust or other noxious or offensive substances⁴⁰;
- 55 (x) drainage, including waste disposal units⁴¹;
- 56 (xi) cesspools⁴² and other means for the reception, treatment or disposal of foul matter⁴³;
- 57 (xii) storage, treatment and removal of waste⁴⁴;
- 58 (xiii) installations utilising solid fuel, oil, gas, electricity or any other fuel or power (including appliances, storage tanks, heat exchangers, ducts, fans and other equipment⁴⁵);
- 59 (xiv) water services (including wells and bore-holes for the supply of water) and associated fittings and fixed equipment⁴⁶;
- 60 (xv) telecommunications services (including telephones and radio and television wiring installations⁴⁷);
- 61 (xvi) lifts, escalators, hoists, conveyors and moving footways⁴⁸;
- 62 (xvii) plant providing air under pressure⁴⁹;
- 63 (xviii) standards of heating, artificial lighting, mechanical ventilation and air-conditioning and provision of power outlets⁵⁰;
- 64 (xix) open space about buildings and the natural lighting and ventilation of buildings⁵¹;
- 65 (xx) accommodation for specific purposes in or in connection with buildings, and the dimensions of rooms and other spaces within buildings⁵²;
- 66 (xxi) means of access to and egress from buildings and parts of buildings⁵³;
- 67 (xxii) prevention of danger and obstruction to persons in and about buildings (including passers-by⁵⁴);
- 68 (xxiii) matters connected with or ancillary to any of the matters mentioned above⁵⁵;

Building regulations may require things to be provided or done in connection with buildings, as well as regulating the provision or doing of things in or in connection with buildings⁵⁶; and they may prescribe the manner in which work is to be carried out⁵⁷.

The following may be regulated by building regulations⁵⁸:

- 69 (A) alterations and extensions of buildings and of services, fittings and equipment in or in connection with buildings⁵⁹;
- 70 (B) new services, fittings or equipment provided in or in connection with buildings⁶⁰;
- 71 (C) buildings and services, fittings and equipment in or in connection with buildings, so far as affected by alterations or extensions of buildings⁶¹, or new, altered or extended services, fittings or equipment in or in connection with buildings⁶²;
- 72 (D) the whole of a building, together with any services, fittings or equipment provided in or in connection with it, in respect of which there are or are proposed to be carried out any operations that⁶³ constitute the construction of a building for these purposes⁶⁴;
- 73 (E) buildings or parts of buildings, together with any services, fittings or equipment provided in or in connection with them, in cases where the purposes for which or the manner or circumstances in which a building or part of a building is used change or changes in a way that constitutes a material change of use⁶⁵ of the building or part within the meaning of the expression 'material change of use' as defined for these purposes by building regulations⁶⁶.

Building regulations may authorise local authorities to fix by means of schemes and to recover such charges for or in connection with the performance of functions of theirs relating to building regulations as they may determine in accordance with principles prescribed by the regulations⁶⁷. Building regulations may provide for a provision of them to apply generally, or in a particular area, make different provision for different areas and generally different provision for different circumstances or cases, and include such supplemental and incidental provisions as appear to the Secretary of State expedient⁶⁸.

1 For the meaning of 'building regulations' see para 306 ante. The Building (Local Authority Charges) Regulations 1998, SI 1998/3129 (see para 329 et seq post) have been made under the Building Act 1984 s 1(3), Sch 1 paras 9, 10 (see the text to notes 67-68 infra). The Building Regulations 2000, SI 2000/2531 (amended by SI 2001/3335; and SI 2002/440) have been made under the Building Act 1984 Sch 1 paras 1, 2, 4, 7, 8 (see the text and notes 2-13, 16-21, 26-66 infra). The Building (Approved Inspectors etc) Regulations 2000/2532 (amended by SI 2001/3336) (see para 356 et seq post) have been made under the Building Act 1984 Sch 1 (as amended).

2 le prescribed by building regulations: see *ibid* s 126.

3 For the purposes of *ibid* Pt I (ss 1-46) (as amended) and any other enactment (whether or not contained in the Building Act 1984) that relates to building regulations, or that mentions 'buildings' or 'a building' in a context from which it appears that those expressions are intended to have the same meaning there as in Pt I (as amended), references to the construction or erection of a building include references to:

- 1 (1) the carrying out of such operations (whether for the construction of a building, the roofing over of an open space between walls or buildings, or otherwise) as may be designated in building regulations as operations falling to be treated for those purposes as the construction or erection of a building (s 123(1)(i)); and
- 2 (2) the conversion of a movable object into what is by virtue of s 121(1), (2) (see para 305 ante) a building (s 123(1)(ii)).

'Construct' and 'erect' are to be construed accordingly: s 123(1). As to the meaning of 'enactment' see para 305 note 2 ante.

4 *Ibid* s 1(3), Sch 1 para 1(a). See note 1 supra.

5 As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

6 Building Act 1984 Sch 1 para 1(b). See note 1 supra.

7 Ibid Sch 1 para 2(a). See note 1 supra. As to the form of notices and certificates see para 418 post. For the authentication and service of notices and certificates see paras 419-420 post.

8 See *Cynat Products Ltd v Landbuild (Investment and Property) Ltd* [1984] 3 All ER 513. 'Plans' includes drawings of any other description, and also specifications or other information in any form: Building Act 1984 s 126.

9 Ibid Sch 1 para 2(b). See note 1 supra.

10 For the meaning of 'local authority' see para 301 note 12 ante.

11 Building Act 1984 Sch 1 para 2(c). See note 1 supra.

12 Ibid Sch 1 para 2(d). See note 1 supra.

13 Ibid Sch 1 para 2(e). See note 1 supra.

14 For the meaning of 'approved inspector' see para 354 post.

15 Building Act 1984 Sch 1 para 3. The requirement of consultation is expressly saved where a Crown authority exercises its power to dispense with or relax requirements of building regulations: see s 44(5); and para 312 post.

16 See note 7 supra.

17 Building Act 1984 Sch 1 para 4(a). See note 1 supra.

18 Ibid Sch 1 para 4(b). See note 1 supra.

19 Ibid Sch 1 para 4(c)(i). See note 1 supra.

20 Ibid Sch 1 para 4(c)(ii). See note 1 supra.

21 Ibid Sch 1 para 4(c)(iii). See note 1 supra.

22 As to the meaning of 'functions' see para 303 note 19 ante.

23 Ibid Sch 1 para 5(1). The wording of what is now Sch 1 para 5(1) is in the form of a power, as distinct from a duty, to charge the prescribed fees, but in exercising the discretion whether to levy such charges an authority must act responsibly and on relevant considerations: see *Ayr Harbour Trustees v Oswald* (1883) 8 App Cas 623, HL; *Dutton v Bognor Regis UDC* [1972] 1 QB 373, [1972] 1 All ER 462, CA; *Anns v Merton London Borough Council* [1978] AC 728 at 754, 755, [1977] 2 All ER 492 at 501, HL, per Lord Wilberforce (*Dutton v Bognor Regis UDC* supra; and *Anns v Merton London Borough Council* overruled on another point by *Murphy v Brentwood District Council* [1991] 1 AC 398, [1990] 2 All ER 908, HL).

The Secretary of State may by order repeal the Building Act 1984 Sch 1 para 5: Sch 1 para 5(2). The power to make an order under Sch 1 para 5(2) is exercisable by statutory instrument, and different days may be appointed by such an order for different provisions or for different purposes: s 120(1). At the date at which this volume states the law, no such order had been made.

24 As to the meaning of 'modifications' see para 303 note 22 ante.

25 Building Act 1984 Sch 1 para 6. Powers exercisable under Sch 1 para 6 otherwise than by a local authority are expressly excluded from the power of a Crown authority to dispense with or relax requirements of building regulations: see s 44(5); and para 312 post.

26 Ie without prejudice to the generality of *ibid* s 1(1): see para 306 ante.

27 Ie for any of the purposes mentioned in *ibid* s 1(1): see para 306 ante.

28 Ibid Sch 1 para 7(a)(i). See note 1 supra.

29 Ibid Sch 1 para 7(a)(ii). See note 1 supra.

30 Ibid Sch 1 para 7(a)(iii)(a). See note 1 supra.

31 Ibid Sch 1 para 7(a)(iii)(b). See note 1 supra.

- 32 Ibid Sch 1 para 7(a)(iii)(c). See note 1 supra.
- 33 Ibid Sch 1 para 7(a)(iv)(a). See note 1 supra.
- 34 Ibid Sch 1 para 7(a)(iv)(b). See note 1 supra.
- 35 Ibid Sch 1 para 7(a)(iv)(c). See note 1 supra.
- 36 Ibid Sch 1 para 7(a)(v). See note 1 supra.
- 37 Ibid Sch 1 para 7(a)(vi). See note 1 supra.
- 38 Ibid Sch 1 para 7(a)(vii). See note 1 supra.
- 39 Ibid Sch 1 para 7(a)(viii). See note 1 supra.
- 40 Ibid Sch 1 para 7(a)(ix). See note 1 supra.
- 41 Ibid Sch 1 para 7(a)(x). See note 1 supra.
- 42 'Cesspool' includes a settlement tank or other tank for the reception or disposal of foul matter from buildings: ibid s 126
- 43 Ibid Sch 1 para 7(a)(xi). See note 1 supra.
- 44 Ibid Sch 1 para 7(a)(xii). See note 1 supra.
- 45 Ibid Sch 1 para 7(a)(xiii). See note 1 supra.
- 46 Ibid Sch 1 para 7(a)(xiv). See note 1 supra.
- 47 Ibid Sch 1 para 7(a)(xv). See note 1 supra.
- 48 Ibid Sch 1 para 7(a)(xvi). See note 1 supra.
- 49 Ibid Sch 1 para 7(a)(xvii). See note 1 supra.
- 50 Ibid Sch 1 para 7(a)(xviii). See note 1 supra.
- 51 Ibid Sch 1 para 7(a)(xix). See note 1 supra.
- 52 Ibid Sch 1 para 7(a)(xx). See note 1 supra.
- 53 Ibid Sch 1 para 7(a)(xxi). See note 1 supra.
- 54 Ibid Sch 1 para 7(a)(xxii). See note 1 supra.
- 55 Ibid Sch 1 para 7(a)(xxiii). See note 1 supra.
- 56 Ibid Sch 1 para 7(b). See note 1 supra.
- 57 Ibid Sch 1 para 7(c). See note 1 supra.
- 58 So far as they relate to matters mentioned in heads (A)-(E) in the text, building regulations may be made to apply to or in connection with buildings erected before the date on which the regulations came into force (ie 1 January 2001: see the Building Regulations 2000, SI 2000/2531, reg 1) but, except as aforesaid and subject to the Building Act 1984 s 2(2) (see para 310 post), do not apply to buildings erected before that date: Sch 1 para 8(2). See note 1 supra. So much of Sch 1 para 8 as restricts the application of building regulations does not apply to building regulations made under s 2(2): see s 2(2); and para 310 post. As to the retrospective application of building regulations providing for civil liability for the breach of building regulations see s 38(2) (partially in force); and para 346 post.
- 59 Ibid Sch 1 para 8(1)(a). See note 1 supra.
- 60 Ibid Sch 1 para 8(1)(b). See note 1 supra.
- 61 Ibid Sch 1 para 8(1)(c)(i). See note 1 supra.

- 62 Ibid Sch 1 para 8(1)(c)(ii). See note 1 supra.
- 63 Ie by virtue of ibid s 123(1): see note 3 supra.
- 64 Ibid Sch 1 para 8(1)(d). See note 1 supra.
- 65 For the meaning of 'material change of use' see para 309 post; definition applied by the Building Regulations 2000, SI 2000/2531, reg 5.
- 66 Building Act 1984 Sch 1 para 8(1)(e). See note 1 supra.
- 67 Ibid Sch 1 para 9. See note 1 supra.
- 68 Ibid Sch 1 para 10. See note 1 supra. Building regulations may repeal or modify:
- 3 (1) any of the following provisions of the Building Act 1984: s 15 (see para 320 post), s 19 (as amended) (see para 331 post), ss 21-29 (as amended) (see paras 333-337 post), ss 41, 59-87 (as amended) (see para 382 et seq post), ss 91-119 (as amended) (see para 352 et seq post), s 123(2) (see para 391 post) and s 126 (except as to the definitions of 'contravention', 'local authority' (as it applies for the purposes of Pt I and Pt II, 'modifications', 'plans', 'prescribed' and 'substantive requirements'), and Sch 3 paras 1, 5-14 (as amended) (see para 303 ante); or
 - 4 (2) any provision of an Act passed before 20 September 1974; or
 - 5 (3) any provision of a local Act passed before the day on which the Deregulation and Contracting Out Act 1994 was passed (ie 3 November 1994),

if it appears to the Secretary of State that it is inconsistent with, or is unnecessary or requires alteration in consequence of, any provision contained in or made under any enactment relating to building regulations: Building Act 1984 Sch 1 para 11 (amended by the Deregulation and Contracting Out Act 1994 s 32(1); and the Local Government Reorganisation (Miscellaneous Provision) (No 4) Order 1986, SI 1986/452, art 3, Sch 2 para 5). Building regulations may repeal or alter the Local Government (Miscellaneous Provisions) Act 1976 s 12(1) (as amended) (byelaws as to supply of heat) or any provision of byelaws in force by virtue of it, and make any modification of s 12(2) that the Secretary of State considers is appropriate in consequence of the repeal or alteration: Building Act 1984 Sch 1 para 11(2).

UPDATE

306-324 Power to make building regulations ... Particulars and plans where a building notice is given

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

306-307 Power to make building regulations ... Subject matter of building regulations

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

307 Subject matter of building regulations

TEXT AND NOTES--Building regulations may also (1) provide for requiring that, in prescribed circumstances, a person of a prescribed class or description is to give to a local authority or an approved inspector a certificate to the effect that the requirements of building regulations as to matters of a prescribed description are satisfied; (2) provide for requiring that such certificates be given within such periods or at such times and in such forms as may be prescribed; (3) provide that a local

authority or an approved inspector is not to exercise or perform a prescribed power or duty unless such a certificate has been given to them or him, or such a certificate has been given to them or him and the certificate has been accepted by them or him; (4) make provision as to (a) the acceptance of such certificates by local authorities and approved inspectors; and (b) other steps to be taken by local authorities or approved inspectors in connection with such certificates: 1984 Act Sch 1 para 4A(1) (Sch 1 para 4A added by the Sustainable and Secure Buildings Act 2004 s 8(1)). 'Prescribed' means prescribed by building regulations: 1984 Act s 126. Building regulations may provide for such certificates to be treated as evidence, but not conclusive evidence, of the matters certified: Sch 1 para 4A(2).

Building regulations may provide that in relation to any work of any type that is being, or that is proposed to be, carried out in prescribed circumstances, there must be a person appointed for the purposes of this provision (the 'appointed person'): Sch 1 para 4B(1) (Sch 1 para 4B added by the 2004 Act s 9). The appointed person in relation to any work must be a person of a prescribed class or description who is appointed by a person determined in accordance with building regulations; and such regulations may make provision for a person to appoint himself: 1984 Act Sch 1 para 4B(2). Building regulations may require appointments for these purposes to be made within such periods or at such times as may be prescribed, and may make provision in relation to the termination of a person's appointment and the replacement of an appointed person: Sch 1 para 4B(3). Building regulations may (i) provide that the appointed person in relation to any work is to have such duties in relation to the planning and management of the carrying out of that work as may be prescribed for purposes connected with facilitating compliance with the requirements of building regulations in relation to that work; (ii) for those purposes impose duties in relation to the appointed person, or anything that he does, or proposes to do, in connection with his duties, on persons who are participating, or who are to participate, in the carrying out of that work: Sch 1 para 4B(4). The duties that building regulations may impose on persons who are participating, or who are to participate, in the carrying out of any work include (A) duties to comply with directions given to them by the appointed person; (B) duties that are framed by reference to determinations made by that person: Sch 1 para 4B(5).

NOTE 1--SI 1998/3129 amended: SI 2004/533. SI 2000/2531 further amended: SI 2006/652, SI 2006/3318, SI 2008/671, SI 2008/2334, SI 2009/466. SI 2000/2532 further amended: SI 2004/1466, SI 2006/652, SI 2006/3318, SI 2008/2334.

TEXT AND NOTE 29--Head (ii) now includes re-use: 1984 Act Sch 1 para 7(a)(ii) (amended by the 2004 Act s 3(1), (2)).

TEXT AND NOTE 40--Head (ix) refers also to vapours: 1984 Act Sch 1 para 7(a)(ix) (amended by the 2004 Act s 3(1), (3)).

TEXT AND NOTE 46--In head (xiv) associated fittings and fixed equipment now includes equipment for monitoring and measuring supplies of water: 1984 Act Sch 1 para 7(a) (xiv) (amended by the 2004 Act s 3(1), (4)).

TEXT AND NOTE 54--Also, heads (xxiia) measures relating to the security of buildings; (xxiib) measures affecting the use of fuel or power; (xxiic) equipment for monitoring and measuring supplies of fuel, power or heat; (xxiid) recycling facilities (including facilities for composting); (xxiie) the production of heat or the generation of electricity by microgeneration (as defined by building regulations): 1984 Act Sch 1 para 7(a) (amended by the 2004 Act s 3(1), (5)); and the Climate Change and Sustainable Energy Act 2006 s 11).

NOTE 58--Now, subject to the 1984 Act Sch 1 para 8(3)-(6) and to ss 2(2), 2A (see PARA 310), building regulations must not apply to or in connection with buildings erected

before the date on which the regulations come into force: Sch 1 para 8(2) (substituted by the 2004 Act s 3(7)). The following building regulations may be made to apply to or in connection with buildings erected before the date on which the regulations come into force: (1) regulations falling within the 1984 Act Sch 1 para 8(1)(a)-(e) (see TEXT AND NOTES 59-66); (2) regulations made with respect to the demolition of buildings; (3) regulations made with respect to the use of materials or components, including surface finishes, that, in whole or in part, have been produced from, or incorporate, recycled items; (4) regulations made with respect to the re-use of materials or components, including surface finishes; (5) regulations falling within Sch 1 para 8(4): Sch 1 para 8(3) (Sch 1 para 8(3)-(6) added by the 2004 Act s 3(7)). Building regulations fall within the 1984 Act Sch 1 para 8(4) if (a) in accordance with Sch 1 para 8(1)(f) (see TEXT AND NOTE 66), they are framed by reference to a change in the occupants of a building (or part); and (b) they are (i) made for the purpose mentioned in s 1(1)(b) (see PARA 306); or (ii) made, otherwise than for that purpose, with respect to measures calculated to secure, or to contribute to, the prevention or reduction of emissions, whether or not from the building in question, of smoke, gases, vapours or fumes: Sch 1 para 8(4) (as so added). The provision that may be made by building regulations includes provision imposing on a person carrying out work of any type in relation to a building (whenever erected), or in relation to any service, fitting or equipment provided in or in connection with a building, whenever erected, a requirement to do things for the purpose mentioned in s 1(1)(b), or a requirement to do things, otherwise than for that purpose, with respect to measures calculated to secure, or to contribute to, the prevention or reduction of emissions, whether or not from the building in question, of smoke, gases, vapours or fumes: Sch 1 para 8(5) (as so added). The things whose doing may be required by virtue of Sch 1 para 8(5) are (A) things to be done in relation to the work in question; (B) any other things but only if they are to be done in relation to the building in question, or any service, fitting or equipment provided in or in connection with that building: Sch 1 para 8(6) (as so added).

TEXT AND NOTE 66--Also head (F) buildings or part of buildings, together with any services, fittings or equipment provided in or in connection with them, in cases where the persons in occupation of a building or part of a building change in prescribed circumstances: 1984 Act Sch 1 para 8(1)(f) (added by the 2004 Act s 3(1), (6)).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(1) IN GENERAL/308. Requirements relating to building work.

308. Requirements relating to building work.

The current building regulations¹ impose less detailed control than earlier regulations. Detail is now to be found in the documents containing practical guidance which are approved by the Secretary of State².

'Building work' means:

- 74 (1) the erection or extension of a building³;
- 75 (2) the provision or extension of a controlled service or fitting⁴ in connection with a building⁵;
- 76 (3) the material alteration⁶ of a building, or a controlled service or fitting⁷;
- 77 (4) work required⁸ in relation to a material change of use⁹;
- 78 (5) the insertion of insulating material into the cavity wall of a building¹⁰;
- 79 (6) work involving the underpinning of a building¹¹.

Building work must be carried out so that it complies with the applicable requirements¹² mentioned in heads (a) to (m) below, and so that the method of complying with any such requirement does not result in the failure of any part of the building work to comply with another such requirement¹³. The applicable requirements are those relating to:

- 80 (a) structure (that is loading, ground movement and disproportionate collapse)¹⁴;
- 81 (b) fire safety (that is means of warning and escape, internal fire spread (linings and structure), external fire spread and access and facilities for the fire service)¹⁵;
- 82 (c) site preparation and resistance to moisture (that is the preparation of sites, dangerous and offensive substances, subsoil drainage, and resistance to weather and ground moisture)¹⁶;
- 83 (d) toxic substances (that is cavity insulation)¹⁷;
- 84 (e) resistance to the passage of sound (that is airborne sound for walls, floors and stairs, and impact sound for floors and stairs)¹⁸;
- 85 (f) ventilation (that is means of ventilation and condensation in roofs)¹⁹;
- 86 (g) hygiene (that is sanitary conveniences and washing facilities, bathrooms and hot water storage)²⁰;
- 87 (h) drainage and waste disposal (that is foul water drainage, wastewater treatment systems and cesspools, rainwater drainage, building over sewers, separate systems of drainage and solid waste storage)²¹;
- 88 (i) combustion appliances and fuel storage systems (that is air supply, the discharge of products of combustion, the protection of buildings, the provision of information, the protection of liquid fuel storage systems and protection against pollution)²²;
- 89 (j) protection from falling, collision and impact (that is stairs, ladders and ramps, protection from falling, vehicle barriers and loading bays, protection from collision with open windows, etc and protection against impact from and trapping by doors)²³;
- 90 (k) conservation of fuel and power (that is dwellings²⁴ and buildings other than dwellings)²⁵;
- 91 (l) access and facilities for disabled people (that is access and use, sanitary conveniences and audience or spectator seating)²⁶; and

- 92 (m) glazing (that is protection against impact, the manifestation of glazing, the safe opening and closing of windows, etc and safe access for cleaning windows, etc)²⁷.

However, the requirements mentioned in heads (a) to (j) and head (m) above, except for the requirements relating to wastewater treatment systems and cesspools²⁸ and protection against pollution²⁹, mentioned in head (h) and head (i) above, do not require anything to be done except for the purpose of securing reasonable standards of health and safety for persons in or about buildings and others who may be affected by buildings, or matters connected with buildings³⁰. The requirements mentioned in heads (a) to (m) above are subject to certain limitations on their application³¹.

Building work must be carried out so that, after it has been completed: (i) any building which is extended or to which a material alteration is made³²; (ii) any building in or in connection with which a controlled service or fitting is provided, extended or materially altered³³; and (iii) any controlled service or fitting³⁴, complies with the relevant statutory requirements³⁵ or, where it did not comply with any such requirement, is no more unsatisfactory in relation to that requirement than before the work was carried out³⁶.

Building work must be carried out with adequate and proper materials which are appropriate for the circumstances in which they are used, are adequately mixed and prepared, and are applied, used or fixed so as adequately to perform the functions for which they are designed, and in a workmanlike manner³⁷. The local authority may take such samples of the material to be used in the carrying out of building work as may be necessary to enable it to ascertain whether such materials comply with the provisions of the Building Regulations 2000³⁸.

The requirements of building regulations are subject to exemptions in respect of certain buildings, public bodies and work³⁹.

1 See the Building Regulations 2000, SI 2000/2531 (amended by SI 2001/3335; and SI 2002/440). As to the power to make building regulations see para 306 ante. As to the relevant transitional provisions see the Building Regulations 2000, SI 2000/2531, reg 23.

2 As to such documents see para 321 post.

3 Building Regulations 2000, SI 2000/2531, reg 3(1)(a). For these purposes, 'building' means any permanent or temporary building but not any other kind of structure or erection, and a reference to a building includes a reference to part of a building: reg 2(1).

4 For these purposes, 'controlled service or fitting' means a service or fitting in relation to which *ibid* Sch 1 Pts G, H, J (as amended) or L (as substituted) imposes a requirement: reg 2(1). The provision or extension of a controlled service or fitting in or in connection with an existing dwelling, and being a service or fitting in relation to which Sch 1 Pt L para L1 (as substituted), but not Sch 1 Pts G, H (as amended) or J (as amended), imposes a requirement, is only building work where that work consists of the provision of a window, rooflight, roof window, door (being a door which together with its frame has more than 50% of its internal face area glazed), a space heating or hot water service boiler, or a hot water vessel: reg 3(1A) (added by SI 2001/3335).

5 Building Regulations 2000, SI 2000/2531, reg 3(1)(b) (amended by SI 2001/3335) (which is expressed to be subject to the Building Regulations 2000, SI 2000/2531, reg 3(1A) (as added) (see note 4 supra).

6 An alteration is material if the work, or any part of it, would at any stage result in: (1) a building or controlled service or fitting not complying with a relevant requirement where previously it did; or (2) a building or controlled service or fitting which before the work commenced did not comply with a relevant requirement, being more unsatisfactory in relation to such a requirement: *ibid* reg 3(2). For the purposes of reg 3(2), 'relevant requirement' means any of the following requirements of Sch 1 (as amended): Sch 1 Pt A (structure), Sch 1 Pt B para B1 (means of warning and escape), Sch 1 Pt B para B3 (internal fire spread; structure), Sch 1 Pt B para B4 (external fire spread), Sch 1 Pt B para B5 (access and facilities for the fire service), Sch 1 Pt M (access and facilities for disabled people): reg 3(3).

7 *Ibid* reg 3(1)(c).

8 le by *ibid* reg 6 (as amended): see para 309 post.

9 *Ibid* reg 3(1)(d).

10 *Ibid* reg 3(1)(e).

11 *Ibid* reg 3(1)(f).

12 le the applicable requirements contained in *ibid* Sch 1 (as amended): see the text and notes 14-27 *infra*. The local authority may make such tests of any building work as may be necessary to establish whether it complies with any of the applicable requirements contained in Sch 1: see reg 18 (substituted by SI 2001/3335). The Building Regulations 2000, SI 2000/2531, reg 18 (as substituted) does not apply in respect of any work specified in an initial notice, an amendment notice or a public body's notice, which is in force: reg 20(1). Regulation 18 (as substituted) does not apply in respect of any work in relation to which a final certificate or a public body's final certificate has been accepted by the local authority: reg 20(2). As to initial notices, amendment notices, public bodies' notices, final certificates and public bodies' final certificates see para 354 *et seq* post.

13 *Ibid* reg 4(1). Where building work consists only of the installation, as a replacement, of a window, rooflight, roof window or door in an existing building and the work is carried out by a person who is registered under the Fenestration Self-Assessment Scheme by Fensa Ltd in respect of that type of work, the local authority is authorised to accept, as evidence that the requirements of regs 4, 7 (see the text to note 37 *infra*) have been satisfied, a certificate to that effect by the person carrying out the building work: reg 16A(1), (3) (reg 16A added by SI 2002/440). The person carrying out the building work must, not more than 10 days after that work has been completed, give the local authority notice to that effect, or the certificate referred to in the Building Regulations 2000, SI 2000/2531, reg 16A(3) (as added): reg 16A(4) (as so added). For these purposes, 'installation' includes any work which is necessary to ensure that the building work complies with the applicable requirements contained in Sch 1 (as amended) (see heads (a)-(m) in the text): reg 16A(2) (as so added). Regulation 16A (as added) does not apply in relation to building work if the contract for the provision of the work was entered into before 1 April 2002, and the work is completed before 1 July 2002: Building (Amendment) Regulations 2002, SI 2002/440 reg 3. The Building Regulations 2000, SI 2000/2531, reg 16A (as added) does not apply in respect of any work specified in an initial notice, an amendment notice or a public body's notice, which is in force: reg 20(1).

14 See *ibid* Sch 1 Pt A.

15 See *ibid* Sch 1 Pt B.

16 See *ibid* Sch 1 Pt C.

17 See *ibid* Sch 1 Pt D.

18 See *ibid* Sch 1 Pt E.

19 See *ibid* Sch 1 Pt F.

20 See *ibid* Sch 1 Pt G.

21 See *ibid* Sch 1 Pt H (substituted by SI 2001/3335).

22 See the Building Regulations 2000, SI 2000/2531, Sch 1 Pt J (substituted by SI 2001/3335).

23 See the Building Regulations 2000, SI 2000/2531, Sch 1 Pt K.

24 For these purposes, 'dwelling' includes a dwelling-house and a flat: *ibid* reg 2(1). 'Dwelling-house' does not include a flat or a building containing a flat: reg 2(1). 'Flat' means separate and self-contained premises constructed or adapted for use for residential purposes and forming part of a building from some other part of which it is divided horizontally: reg 2(1).

25 See *ibid* Sch 1 Pt L (substituted by SI 2001/3335).

26 See the Building Regulations 2000, SI 2000/2531, Sch 1 Pt M.

27 See *ibid* Sch 1 Pt N.

28 le the requirements of *ibid* Sch 1 Pt H para H2 (as substituted): see the text to note 21 *supra*.

29 le the requirements of *ibid* Sch 1 Pt J para J6 (as substituted): see the text to note 22 *supra*.

- 30 Ibid reg 8.
- 31 See ibid Sch 1 Pts A-N (amended by SI 2001/3335).
- 32 Building Regulations 2000, SI 2000/2531, reg 4(2)(a).
- 33 Ibid reg 4(2)(b).
- 34 Ibid reg 4(2)(c).
- 35 Ie of ibid Sch 1 (as amended): see heads (a)-(m) in the text.
- 36 Ibid reg 4(2).
- 37 Ibid reg 7. See note 13 supra. The local authority may make such tests of any building work as may be necessary to establish whether it complies with reg 7: reg 18 (substituted by SI 2001/3335). The Building Regulations 2000, SI 2000/2531, reg 18 (as substituted) and reg 19 do not apply in respect of any work specified in an initial notice, an amendment notice or a public body's notice, which is in force: reg 20(1). Regulation 18 (as substituted) and reg 19 do not apply in respect of any work in relation to which a final certificate or a public body's final certificate has been accepted by the local authority: reg 20(2).
- 38 Ibid reg 19. The text refers to the Building Regulations 2000, SI 2000/2531 (as amended). See note 37 supra.
- 39 As to exempt buildings, public bodies and work see paras 313-314 post.

UPDATE

306-324 Power to make building regulations ... Particulars and plans where a building notice is given

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

308 Requirements relating to building work

TEXT AND NOTES--Where a person intends to renovate a thermal element, such work must be carried out as is necessary to ensure that the whole thermal element complies with the requirements of SI 2000/2531 Sch 1 Pt L para L1(a)(i): reg 4A(1) (regs 4A, 4B added by SI 2006/652). 'Renovation' in relation to a thermal element means the provision of a new layer in the thermal element or the replacement of an existing layer, but excludes decorative finishes, and 'renovate' is to be construed accordingly: SI 2000/2531 reg 2(1) (definition added by SI 2006/652). For these purposes, 'thermal element' means a wall, floor or roof, but does not include windows, doors, roof windows or roof-lights, which separates a thermally conditioned part of the building, 'the conditioned space' from (1) the external environment, including the ground; or (2) in the case of floors and walls, another part of the building which is (a) unconditioned; (b) an extension falling within SI 2000/2531 Sch 2 Class VII (see PARA 313); or (c) where reg 2(2A) applies, conditioned to a different temperature, and includes all parts of the element between the surface bounding the conditioned space and the external environment or other part of the building as the case may be: reg 2(2A) (reg 2(2A), (2B) added by SI 2006/652). Head (2)(c) applies only to a building which is not a dwelling, where the other part of the building is used for a purpose which is not similar or identical to the purpose for which the conditioned space is used: reg 2(2B). Where a thermal element is replaced, the new thermal element must comply with the requirements of SI 2000/2531 Sch 1 Pt L para L1(a)(i): reg 4A(2). Where there is a

change to a building's energy status, such work, if any, must be carried out as is necessary to ensure that the building complies with the applicable requirements of Sch 1 Pt L: reg 4B(1). In reg 4B 'building' means the building as a whole or parts of it that have been designed or altered to be used separately: reg 4B(2) (reg 4B as so added). 'Change to a building's energy status' means any change which results in a building becoming a building to which the energy efficiency requirements of SI 2000/2531 apply, where previously it was not; 'energy efficiency requirements' means the requirements of regs 4A, 17C, 17D (see PARA 328A.1), Sch 1 Pt L: reg 2(1) (definitions added by SI 2006/652). As to the application of SI 2000/2531 regs 4(1), 4A to education buildings and buildings of statutory undertakers see SI 2006/652 reg 28.

TEXT AND NOTES 1-27--Also head (n) electrical safety (design and installation): SI 2000/2531 Pt P (added by SI 2004/3210; and amended by SI 2006/652).

TEXT AND NOTES 3-11--Now heads (7) work required by SI 2000/2531 reg 4A (see TEXT AND NOTES) relating to thermal elements; (8) work required by reg 4B (see TEXT AND NOTES) relating to a change of energy status; (9) work required by reg 17D (see PARA 328A.1) as consequential improvements to energy performance: reg 3(1)(g)-(i) (added by SI 2006/652).

NOTE 4--SI 2000/2531 reg 3(1A) omitted: SI 2006/652.

NOTE 5--SI 2000/2531 reg 3(1)(b) amended: SI 2006/652.

NOTE 6--For 'access and facilities for disabled people' read 'access to and use of buildings': SI 2000/2531 reg 3(3) (amended by SI 2003/2692).

TEXT AND NOTES 12, 13--Where building work is of a kind described in SI 2000/2531 reg 3(1)(g)-(i) (see TEXT AND NOTES 3-11), and the carrying out of that work does not constitute a material alteration, that work need only comply with the applicable requirements of Sch 1 Pt L: reg 4(1A) (added by SI 2006/652).

NOTE 13--Now, where building work consists only of work of a specified type, carried out by specified persons under SI 2000/2531 Sch 2A, the local authority is authorised to accept, as evidence that the requirements of regs 4 and 7 have been satisfied, a certificate to that effect by the person carrying out the building work and the person carrying out the work will, not more than 30 days after the completion of the work, give the occupier a copy of the certificate and give the local authority notice to the effect of the certificate; this does not apply where a person carries out the building work described in Sch 2B: reg 16A (substituted by SI 2004/3210; and amended by SI 2006/652). For the purposes of SI 2000/2531 reg 16A, (1) 'electrical installation' means fixed electrical equipment located on the consumer's side of the electricity supply meter; (2) 'extra-low voltage' means voltage not exceeding, in relation to alternating current, 50 volts between conductors and earth, or in relation to direct current, 120 volts between conductors; and (3) 'low voltage' means voltage not exceeding, in relation to alternating current, 1000 volts between conductors or 600 volts between conductors and earth, or in relation to direct current, 1500 volts between conductors or 900 volts between conductors and earth: reg 2(1) (amended by SI 2004/3210).

NOTE 14--SI 2000/2531 Sch 1 Pt A amended: SI 2004/1465.

NOTE 15--SI 2000/2531 Sch 1 Pt B substituted by SI 2002/2871, and amended by SI 2006/3318.

TEXT AND NOTE 16--Head (c) for 'resistance to moisture' read 'resistance to contaminants and moisture': SI 2000/2531 Sch 1 Pt C (substituted by SI 2004/1465).

NOTE 18--SI 2000/2531 Sch 1 Pt E substituted: SI 2002/2871. Where a requirement is imposed in respect of building work under SI 2000/2531 Sch 1 para E1 and work which is required to be carried out to a building to ensure that it complies with Sch 1 para E1

by virtue of reg 6(1)(e) (see PARA 309 head (e)) or (2)(b) (see PARA 309 head (ii)), the person carrying out the work must (1) ensure that appropriate sound insulation testing is carried out in accordance with a procedure approved by the Secretary of State; and (2) give a copy of the results of such testing to the local authority: SI 2000/2531 reg 20A(1), (2) (reg 20A added by SI 2002/2871; and amended by SI 2003/3133). The results of the testing must be recorded in a manner approved by the Secretary of State and given to the local authority in accordance with head (2) not later than the date on which the notice required by SI 2000/2531 reg 15(4) (see PARA 326) is given: reg 20A(3). Where building work consists of the erection of a dwelling-house or a building containing flats, reg 20A does not apply to any part of the building in relation to which the person carrying out the building work notifies the local authority, not later than the date on which he gives notice of commencement of the work under reg 15(1) (see PARA 326), that, for the purpose of achieving compliance of the work with Sch 1 para E1, he is using one or more design details approved by Robust Details Limited, provided that (a) the notification specifies the part or parts of the building in respect of which he is using the design detail, the design detail concerned, and the unique number issued by Robust Details Limited in respect of the specified use of that design detail; and (b) the building work carried out in respect of the part or parts of the building identified in the notification is in accordance with the design detail specified in the notification: reg 20A(4) (added by SI 2004/1465).

NOTE 19--SI 2000/2531 Sch 1 Pt F amended: SI 2004/1465.

NOTE 20--SI 2000/2531 Sch 1 Pt G substituted: SI 2009/1219.

NOTE 21--SI 2000/2531 Sch 1 Pt H amended: SI 2003/2692.

TEXT AND NOTES 24, 25--Words '(that is ... dwellings)' omitted: SI 2000/2531 Sch 1 Pt L (substituted by SI 2006/652).

NOTE 25--Where a requirement is imposed in respect of the erection of a building under SI 2000/2531 Sch 1 para L1(a)(i), the person carrying out the work must, for the purpose of ensuring compliance with SI 2000/2531 reg 17C (see PARA 328A.1) and Sch 1 para L1(a)(i), ensure that pressure testing is carried out in such circumstances as are approved by the Secretary of State, and the testing is carried out in accordance with a procedure approved by the Secretary of State and give notice of the results of the testing to the local authority: reg 20B(1), (2) (regs 20B-20D added by SI 2006/652). Such notice must record the results and the data on which they are based in a manner approved by the Secretary of State and be given to the local authority not later than seven days after the final test is carried out: SI 2000/2531 reg 20B(3). A local authority is authorised to accept, as evidence that the requirements for testing in accordance with an approved procedure have been satisfied, a certificate to that effect by a person who is registered by the British Institute of Non-destructive Testing in respect of pressure testing for the air tightness of buildings: reg 20B(4) (reg 20B as so added). Where such a certificate contains the information required by reg 20B(3), the requirement to give notice of the results of the testing in reg 20B(2) does not apply: reg 20B(5).

Where a requirement is imposed in respect of building work under Sch 1 para L1(b), the person carrying out the work must, for the purpose of ensuring compliance with Sch 1 para L1, give to the local authority a notice confirming that the fixed building services have been commissioned in accordance with a procedure approved by the Secretary of State; this requirement does not apply to the provision or extension of any fixed building service where testing and adjustment is not possible or would not affect the energy efficiency of that fixed building service: reg 20C(1),(2) (reg 20C(1) substituted by SI 2007/3384). 'Fixed building services' means any part of, or any controls associated with (1) fixed internal or external lighting systems, but does not

include emergency escape lighting or specialist process lighting; or (2) fixed systems for heating, hot water, air conditioning or mechanical ventilation: reg 2(1) (definition added by SI 2006/652). The notice must be given to the local authority not later than the date on which the notice required by SI 2000/2531 reg 15(4) (see PARA 326) is required to be given or where reg 15 does not apply, not more than 30 days after completion of the work: reg 20C(3).

SI 2000/2531 Sch 1 Pt L para L1 amended: SI 2007/3384.

Where reg 17C (see PARA 328A.1) applies the person carrying out the work must give the local authority a notice which specifies the target CO₂ emission rate for the building and the calculated CO₂ emission rate for the building as constructed: reg 20D(1). The notice must be given to the local authority not later than the date on which the notice required by reg 20B is required to be given: reg 20D(2). A local authority is authorised to accept, as evidence that the requirements of reg 17C would be satisfied if the building were constructed in accordance with an accompanying list of specifications, a certificate to that effect by a person who is registered by FAERO Limited or BRE Certification Limited in respect of the calculation of CO₂ emission rates of buildings: reg 20D(3). Where such a certificate is given to the local authority reg 20D(1) does not apply and the person carrying out the work must provide to the local authority not later than the date on which the notice required by reg 20B is required to be given a notice which states whether the building has been constructed in accordance with the list of specifications which accompanied the certificate and, if it has not, lists any changes to the specifications to which the building has been constructed: reg 20D(4).

Where reg 17K (see para 328C) applies, the person carrying out the work must give the local authority a notice which specifies the potential consumption of wholesome water per person per day calculated in accordance with the methodology referred to in relation to the completed dwelling: reg 20E(1) (reg 20E added by SI 2009/1219). The notice must be given to the local authority not later than five days after the work has been completed: reg 20E(2).

Regulations 20A-20E do not apply in respect of any work specified in an initial notice, an amendment notice or a public body's notice, which is in force: reg 20(1) (amended by SI 2006/652, SI 2009/1219).

TEXT AND NOTE 26--Head (l). for 'access ... disabled people' read 'access to and use of buildings': SI 2000/2531 Sch 1 Pt M (substituted by SI 2003/2692).

TEXT AND NOTES 27-30--Replaced. The requirements in heads (a)-(d), (f)-(j) and (m), except for the requirements relating to wastewater treatments and cesspools and protection against pollution, mentioned in heads (h) and (i), do not require anything to be done except for the purpose of securing reasonable standards of health and safety for persons in or about buildings and any others who may be affected by buildings, or matters connected with buildings: SI 2000/2531 reg 8 (substituted by SI 2002/2871; and amended by SI 2009/1219).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(1) IN GENERAL/309. Requirements relating to a material change of use.

309. Requirements relating to a material change of use.

There is a material change of use where there is a change in the purposes for which or the circumstances in which a building¹ is used, so that after that change:

- 93 (1) the building is used as a dwelling², where previously it was not³;
- 94 (2) the building contains a flat⁴, where previously it did not⁵;
- 95 (3) the building is used as an hotel or a boarding house, where previously it was not⁶;
- 96 (4) the building is used as an institution⁷, where previously it was not⁸;
- 97 (5) the building is used as a public building⁹, where previously it was not¹⁰;
- 98 (6) the building is not exempt from building regulations¹¹ by reason of it being controlled under other legislation, not frequented by people, a greenhouse or agricultural building, a temporary building, an ancillary building or a small detached building, where previously it was¹²; or
- 99 (7) the building, which contains at least one dwelling, contains a greater or lesser number of dwellings than it did previously¹³.

Where there is a material change of use of the whole of a building, such work, if any, must be carried out as is necessary to ensure that the building complies with the applicable requirements¹⁴. The applicable requirements are those relating to:

- 100 (a) in all cases, means of warning and escape, internal fire spread (linings and structure), external fire spread (roofs), access and facilities for the fire service, ventilation, sanitary conveniences and washing facilities, bathrooms, foul water drainage, solid waste storage, combustion appliances, conservation of fuel and power (dwellings) and conservation of fuel and power (buildings other than dwellings)¹⁵;
- 101 (b) in the case of a material change of use described in heads (3) to (5) or head (6) above, structure¹⁶;
- 102 (c) in the case of a building exceeding 15 metres in height¹⁷, external fire spread (walls)¹⁸;
- 103 (d) in the case of a material change of use described in head (1) above, resistance to weather and ground moisture¹⁹; and
- 104 (e) in the case of a material change of use described in heads (1), (2) or (7) above, resistance to the passage of sound²⁰.

Where there is a material change of use of part only of a building, such work, if any, must be carried out as is necessary to ensure that: (i) that part complies in all cases with any applicable requirements referred to in head (a) above²¹; (ii) in a case in which heads (b), (d) or (e) above apply, that part complies with the requirements referred to in the relevant head²²; and (iii) in a case to which head (c) above applies, the whole building complies with the requirement referred to in that head²³.

1 For the meaning of 'building' see para 308 note 3 ante.

2 For the meaning of 'dwelling' see para 308 note 24 ante.

- 3 Building Regulations 2000, SI 2000/2531, reg 5(a).
- 4 For the meaning of 'flat' see para 308 note 24 ante.
- 5 Building Regulations 2000, SI 2000/2531, reg 5(b).
- 6 Ibid reg 5(c).
- 7 For these purposes, 'institution' means an institution (whether described as a hospital, home, school or other similar establishment) which is used as living accommodation for, or for the treatment, care or maintenance of persons: (1) suffering from disabilities due to illness or old age or other physical or mental incapacity; or (2) under the age of five years, where such persons sleep on the premises: *ibid* reg 2(1).
- 8 Ibid reg 5(d).
- 9 For these purposes, 'public building' means a building consisting of or containing: (1) a theatre, public library, hall or other place of public resort; (2) a school or other educational establishment not exempted from the operation of building regulations by virtue of the Building Act 1984 s 4(1)(a) (see para 313 post); or (3) a place of public worship: Building Regulations 2000, SI 2000/2531, reg 2(2). However, a building is not to be treated as a place of public resort because it is, or it contains, a shop, storehouse or warehouse, or is a dwelling to which members of the public are occasionally admitted: reg 2(2). 'Shop' includes premises: (a) used for the sale to members of the public of food or drink for consumption on or off the premises; (b) used for retail sales by auction to members of the public; (c) used by members of the public as a barber or hairdresser, or for the hiring of any item; and (d) where members of the public may take goods for repair or other treatment: reg 2(1).
- 10 Ibid reg 5(e).
- 11 Ie the building is not a building described in *ibid* reg 9, Sch 2 Classes I-VI: see para 313 post.
- 12 Ibid reg 5(f).
- 13 Ibid reg 5(g).
- 14 Ibid reg 6(1).
- 15 Ibid reg 6(1)(a) (amended by SI 2001/3335). The text refers to the requirements of the Building Regulations 2000, SI 2000/2531, Sch 1 Pt B paras B1-B3, B4(2), B5, Sch 1 Pt F paras F1, F2, Sch 1 Pt G paras G1, G2, Sch 1 Pt H paras H1, H6 (as substituted), Sch 1 Pt J paras J1-J3 (as substituted), Sch 1 Pt L paras L1, L2 (as substituted): see para 308 ante.
- 16 Ibid reg 6(1)(b). The text refers to the requirements of Sch 1 Pt A paras A1-A3: see para 308 ante.
- 17 For these purposes, 'height' means the height of the building measured from the mean level of the ground adjoining the outside of the external walls of the building to the level of half the vertical height of the roof of the building, or to the top of the walls or of the parapet, if any, whichever is the higher: *ibid* reg 2(1).
- 18 Ibid reg 6(1)(b). The text refers to the requirements of Sch 1 Pt B para B4(1): see para 308 ante.
- 19 Ibid reg 6(1)(c). The text refers to the requirements of Sch 1 Pt C para C4: see para 308 ante.
- 20 Ibid reg 6(1)(d). The text refers to the requirements of Sch 1 Pt E paras E1-E3: see para 308 ante.
- 21 Ibid reg 6(2)(a).
- 22 Ibid reg 6(2)(b).
- 23 Ibid reg 6(2)(c).

UPDATE

306-324 Power to make building regulations ... Particulars and plans where a building notice is given

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

309 Requirements relating to a material change of use

TEXT AND NOTES 2-13--Also heads (8) the building contains a room for residential purposes, where previously it did not; (9) the building, which contains at least one room for residential purposes, contains a greater or lesser number of such rooms than it did previously' or (10) the building is used as a shop, where previously it was not: SI 2000/2531 reg 5(h)-(j) (reg 5(h), (i) added by SI 2002/2871; SI 2000/2531 reg 5(j) added by SI 2003/2692). 'Room for residential purposes' means a room, or a suite of rooms, which is not a dwelling-house or a flat and which is used by one or more persons to live and sleep, and includes a room in a hostel, a hotel, a boarding house, a hall of residence or a residential home, whether or not the room is separated from or arranged in a cluster group with other rooms, but does not include a room in a hospital, or other similar establishment, used for patient accommodation; and for the purposes of this definition, a 'cluster' is a group of rooms for residential purposes which is (a) separated from the rest of the building in which it is situated by a door which is designed to be locked, and (b) not designed to be occupied by a single household: SI 2000/2531 reg 2(1) (definition added by SI 2002/2871; and substituted by SI 2004/1465).

NOTE 12--SI 2000/531 reg 5(f) amended: SI 2002/2871.

TEXT AND NOTES 15-20--Also, heads (f) in the case of a material change of use described in head (5), where the public building consists of or contains a school, acoustic conditions in schools (SI 2000/2531 reg 6(1)(f) (added by SI 2002/2871), which refers to the requirements of SI 2000/2531 Sch 1 Pt E para E4); (g) in the case of a material change of use described in heads (3)-(5) or (10), access and use (SI 2000/2531 reg 6(1)(g) (added by SI 2003/2692), which refers to the requirements of SI 2000/2531 Sch 1 Pt M para M1 (Sch 1 Pt M as substituted: see PARA 308)); (h) in the case of a material change of use described in heads (1)-(4), (7)-(9), or, where the material change provides new residential accommodation, head (6), resistance to contaminants (SI 2000/2531 reg 6(1)(cc) (added by SI 2004/1465), which refers to the requirements of SI 2000/2531 Sch 1 Pt C para C1(2) (Sch 1 Pt C as substituted: see PARA 308)); and (i) in the case of a material change of use described in heads (1) and (2) (SI 2000/2531 reg 6(1)(ff) (added by SI 2009/1219)), which refers to the requirements of SI 2000/2531 Sch 1 Pt G paras G2, G3(4).

TEXT AND NOTE 15--SI 2000/2531 reg 6(1)(a) further amended: SI 2004/1465, SI 2004/3210, SI 2006/652, SI 2009/1219.

NOTE 18--Reference to SI 2000/2531 reg 6(1)(b) should be to reg 6(1)(c).

NOTE 19--Reference to SI 2000/2531 reg 6(1)(c) should be to reg 6(1)(d); and reference to Sch 1 Pt C para C4 is now to Sch 1 Pt C para C2 (resistance to moisture): reg 6(1)(d) (amended by SI 2002/2871, SI 2004/1465).

TEXT AND NOTE 20--Reference to SI 2000/2531 reg 6(1)(d) should be to reg 6(1)(e). Reference to heads (1), (2) or (7) is to heads (1)-(3), (7), (8) or (9): reg 6(1)(e) (amended by SI 2002/2871).

TEXT AND NOTES 21-23--Also head (iv) in a case to which head (g) (see TEXT AND NOTES 15-20) applies, that part and any sanitary conveniences provided in or in connection with that part comply with the requirements referred to in head (g), and the building complies with SI 2000/2531 Sch 1 Pt M para M1(a) (Sch 1 Pt M as substituted: see PARA 308) to the extent that reasonable provision is made to provide either suitable

independent access to that part or suitable access through the building to that part: reg 6(2)(d) (added by SI 2003/2692). 'Independent access' means, in relation to a part of a building, including any extension to that building, a route of access to that part which does not require the user to pass through any other part of the building: SI 2000/2531 reg 2(1) (definition added by SI 2003/2692).

NOTE 22--SI 2000/2531 reg 6(2)(b) amended: SI 2009/1219.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(1) IN GENERAL/310. Continuing requirements.

310. Continuing requirements.

Building regulations¹ may impose on owners² and occupiers of buildings to which building regulations are applicable such continuing requirements as the Secretary of State³ considers appropriate for securing, with respect to any designated provision of building regulations⁴, that the purposes of that provision are not frustrated; but a continuing requirement so imposed does not apply in relation to a building unless a provision of building regulations so designated as one to which the requirement relates applies to that building⁵. Building regulations may impose on owners and occupiers of buildings of a prescribed⁶ class (whenever erected, and whether or not any building regulations were applicable to them at the time of their erection) continuing requirements with respect to all or any of the following matters:

- 105 (1) the conditions subject to which any services, fittings or equipment provided in or in connection with a building of that class may be used⁷;
- 106 (2) the inspection and maintenance of any services, fittings or equipment so provided⁸;
- 107 (3) the making of reports to a prescribed authority on the condition of any services, fittings or equipment so provided⁹.

If a person contravenes¹⁰ a continuing requirement so imposed, the local authority¹¹, without prejudice to its right to take proceedings for a fine in respect of the contravention, may execute any work or take any other action required to remedy the contravention¹², and recover from that person the expenses reasonably incurred by it in so doing¹³. Where a local authority has such power to execute any work or take any other action, it may, instead of exercising that power, by notice require the owner or the occupier of the building to which the contravention relates to execute that work or take that action¹⁴.

1 For the meaning of 'building regulations' see para 306 ante.

2 'Owner' means the person for the time being receiving the rackrent of the premises in connection with which the word is used, whether on his own account or as agent or trustee for another person, or who would so receive it if those premises were let at a rackrent: Building Act 1984 s 126. 'Rackrent', in relation to property, means a rent that is not less than two-thirds of the rent at which the property might reasonably be expected to let from year to year, free from all usual tenant's rates and taxes, and deducting from it the probable average annual cost of the repairs, insurance and other expenses, if any, necessary to maintain the property in a state to command such rent: s 126. 'Premises' includes buildings, land, easements and hereditaments of any tenure: s 126. For the meaning of 'building' see para 305 ante.

3 As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

4 Ie any provision of building regulations designated in the regulations as a provision to which those requirements relate: Building Act 1984 s 2(1).

5 Ibid s 2(1).

6 Ie prescribed by building regulations: see ibid s 126. At the date at which this volume states the law no such class of persons had been prescribed.

7 Ibid s 2(2)(a). So much of s 1(3), Sch 1 para 8 (see para 307 ante) as restricts the application of building regulations does not apply to regulations made by virtue of s 2(2): s 2(2).

- 8 Ibid s 2(2)(b). See note 7 supra.
- 9 Ibid s 2(2)(c). See note 7 supra.
- 10 'Contravention' includes failure to comply, and 'contravene' has a corresponding meaning: *ibid* s 126.
- 11 For the meaning of 'local authority' see para 301 note 12 ante.
- 12 Building Act 1984 s 2(3)(a).
- 13 Ibid s 2(3)(b).
- 14 Ibid s 2(4). Section 99 (content and enforcement of notice requiring works) (see para 409 post) and s 102 (appeal against notice requiring works) (see para 421 post) apply in relation to a notice given under s 2(4), subject to the modification that references in ss 99, 102 to the execution of works are references to the execution of works or the taking of other action, and references to works must be construed accordingly: s 2(5). As to the meaning of 'modifications' see para 303 note 22 ante. Section 8 (relaxation of building regulations) (see para 315 post), s 9 (application for relaxation) (see para 316 post), s 10 (advertisement for relaxation of building regulations) (see para 318 post), and s 39 (appeal against refusal to relax building regulations) (see para 347 post) have effect in relation to continuing requirements imposed by virtue of s 2 subject to the modification that a direction under ss 8, 9 must, if it so provides, cease to have effect at the end of such period as may be specified in the direction: s 2(6).

UPDATE

306-324 Power to make building regulations ... Particulars and plans where a building notice is given

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

310 Continuing requirements

TEXT AND NOTES--Building regulations may impose, on owners and occupiers of buildings, continuing requirements that fall within the 1984 Act s 2A(2): s 2A(1) (s 2A added by the Sustainable and Secure Buildings Act 2004 s 4(1)). A continuing requirement falls within the 1984 Act s 2A(2) if (1) it requires the inspection and testing of a building (a) as respects the use of fuel and power in or in connection with the building; or (b) as respects its contribution to or effect on emissions, whether or not from the building, of smoke, gases, vapours or fumes; (2) it requires the inspection and testing of any service, fitting or equipment provided in or in connection with a building (a) as respects the use of fuel and power in or in connection with the service, fitting or equipment; or (b) as respects its contribution to or effect on emissions, whether or not from it or the building, of smoke, gases, vapours or fumes; (3) it requires the implementation, in relation to a building, or any service, fitting or equipment provided in or in connection with a building, of (a) measures for the purpose mentioned in s 1(1)(b) (see PARA 306); or (b) measures, otherwise than for that purpose, that are calculated to secure, or to contribute to, the prevention or reduction of emissions (whether or not from the building in question or a thing provided in or in connection with it) of smoke, gases, vapours or fumes; (4) it requires the keeping of records in relation to matters within heads (1), (2), or (3); or (5) it requires the making of reports in relation to any of those matters to a prescribed authority: 1984 Act s 2A(2) (s 2A as added). Those requirements may be imposed in the case of buildings, or in the case of services, fittings and equipment provided in or in connection with buildings, irrespective of both (a) when the buildings were erected; and (b) whether building regulations were applicable to them at the time of their erection: s 2A(3) (s 2A as added). Section 2(3)-

(6) (see TEXT AND NOTES 10-14) applies in relation to continuing requirements imposed by virtue of s 2A as those provisions apply in relation to continuing requirements imposed by virtue of s 2: s 2A(4) (s 2A as added). Schedule 1 para 8(2) (as substituted: see PARA 307 NOTE 58) does not impose any restriction on the building regulations that may be made by virtue of s 2A: s 2A(5) (s 2A as added).

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(1) IN GENERAL/311. Consultation with Building Regulations Advisory Committee and other bodies.

311. Consultation with Building Regulations Advisory Committee and other bodies.

The Building Regulations Advisory Committee advises the Secretary of State¹ on the exercise of his power to make building regulations², and on other subjects connected with building regulations³. The Secretary of State may pay such expenses incurred by members of the Committee as he may, with the approval of the Treasury⁴, determine⁵. Before making any building regulations containing substantive requirements⁶, the Secretary of State must consult the Committee and such other bodies as appear to him to be representative of the interests concerned⁷. Before making any building regulations containing provision as to the repeal or modification of any provision of a local Act⁸ passed before 3 November 1994⁹, the Secretary of State must consult (1) the Building Regulations Advisory Committee¹⁰; (2) such persons or bodies as appear to him to be representative of local authorities¹¹; and (3) such other bodies as appear to him to be representative of the interests concerned¹².

1 As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

2 As to the power to make building regulations see para 306 ante. For the meaning of 'building regulations' see para 306 ante.

3 Building Act 1984 s 14(1). The power to establish the Committee was exercisable by the Secretary of State at that time charged with the exercise of the power to make building regulations and the Secretary of State for Wales acting jointly: see s 14(1).

4 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

5 Building Act 1984 s 14(2).

6 'Substantive requirements', in relation to building regulations, means the requirements of building regulations with respect to the design and construction of buildings and the provision of services, fittings and equipment in or in connection with buildings (including requirements imposed by virtue of *ibid* s 2(1), (2)(a) or s 2(2)(b) (continuing requirements) (see para 310 ante)), as distinct from procedural requirements: s 126. For the meaning of 'construction' see para 307 note 3 ante. For the meaning of 'building' see para 305 ante.

7 *Ibid* s 14(3).

8 As to the meaning of 'local Act' see para 305 note 2 ante.

9 Ie containing provision of the kind authorised by the Building Act 1984 s 1(3), Sch 1 para 11(1)(c) (as added) (see para 307 ante). The text refers to 3 November 1994, being the date on which the Deregulation and Contracting Out Act 1994 came into force.

10 Building Act 1984 s 14(4)(a) (s 14 added by the Deregulation and Contracting Out Act 1994 s 32(2)).

11 Building Act 1984 s 14(4)(b) (as added: see note 10 supra). For the meaning of 'local authority' see para 301 note 12 ante.

12 *Ibid* s 14(4)(c) (as added: see note 10 supra).

UPDATE

306-324 Power to make building regulations ... Particulars and plans where a building notice is given

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

311 Consultation with Building Regulations Advisory Committee and other bodies

NOTE 6--'Substantive requirements' now means the requirements of building regulations with respect to the matters mentioned in the 1984 Act s 1(1A) (see PARA 306); and the definition now also includes the continuing requirements that relate to fuel, power and emissions that are mentioned in s 2A(1), (2)(a) or (b) that are imposed by virtue of s 2A(1) (see PARA 310): 1984 Act s 126 (amended by the Sustainable and Secure Buildings Act 2004 ss 1(4), 4(5)).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(1) IN GENERAL/312. Application to the Crown.

312. Application to the Crown.

As from a day to be appointed, the following provisions have effect¹. Except in so far as building regulations² provide otherwise, the substantive requirements³ of building regulations:

- 108 (1) apply in relation to work carried out⁴ or proposed to be carried out by or on behalf of a Crown authority⁵ (whether or not in relation to a Crown building⁶) as they would apply if the person by or on behalf of whom the work was or is to be carried out were not a Crown authority⁷; and
- 109 (2) so far as they consist of continuing requirements⁸, apply to Crown authorities (whether or not in relation to Crown buildings) as they apply to persons who are not Crown authorities⁹.

In so far as building regulations so provide as regards any of the substantive requirements of building regulations, those requirements:

- 110 (a) apply in relation to work carried out or proposed to be carried out as mentioned in head (1) above in inner London¹⁰; and
- 111 (b) so far as they consist of continuing requirements, apply to Crown authorities there as mentioned in head (2) above¹¹,

even if those requirements do not apply there in the case of work carried out or proposed to be carried out otherwise than by or on behalf of a Crown authority or, in the case of continuing requirements, do not apply there to persons other than Crown authorities¹².

Except in so far as building regulations provide otherwise, building regulations and the enactments¹³ relating to building regulations:

- 112 (i) apply in relation to work carried out or proposed to be carried out in relation to a Crown building otherwise than by or on behalf of a Crown authority, and, in the case of the provision relating to continuing requirements¹⁴ and building regulations made by virtue of it, apply in relation to a Crown building to persons other than Crown authorities, as they would apply if the building were not a Crown building¹⁵; and
- 113 (ii) apply in relation to work carried out or proposed to be carried out by or on behalf of a government department acting for a person other than a Crown authority as they would apply if the work had been or were to be carried out by that person¹⁶.

Where work is carried out or proposed to be carried out by or on behalf of a Crown authority¹⁷, or a Crown authority is or, apart from any dispensation or relaxation, will be subject to continuing requirements¹⁸, that authority may exercise the like powers¹⁹ of dispensing with or relaxing the substantive requirements of building regulations or, as the case may be, the continuing requirements in question as are conferred on the Secretary of State and local authorities²⁰, subject to the like requirements²¹ as to consultation, if any, as apply²² in the case of a local authority²³, and the like requirements as in the case of the Secretary of State apply²⁴, and no application is necessary for the exercise²⁵ of any such powers²⁶.

- 1 The Building Act 1984 s 44 is to be brought into force by order made by the Secretary of State under s 134(1) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.
 - 2 For the meaning of 'building regulations' see para 306 ante.
 - 3 For the meaning of 'substantive requirements' see para 311 note 6 ante.
 - 4 The provisions of the Building Act 1984 s 44 (not yet in force), with any necessary modifications, apply in relation to the making of a material change in the use of a building within the meaning of building regulations made for the purposes of Sch 1 para 8(1)(e) (see para 307 ante) as they apply in relation to the carrying out of work: s 44(10) (not yet in force: see note 1 supra). See note 7 infra. As to the meaning of 'modifications' see para 303 note 22 ante.
 - 5 For these purposes, 'Crown authority' means the Crown Estate Commissioners, a Minister of the Crown, a government department, any other person or body whose functions are performed on behalf of the Crown (not being a person or body whose functions are performed on behalf of Her Majesty in her private capacity), or a person acting in right of the Duchy of Lancaster or the Duchy of Cornwall: *ibid* s 44(8) (not yet in force: see note 1 supra). As to the meaning of 'functions' see para 303 note 19 ante. As to the Crown Estate Commissioners see CROWN PROPERTY vol 12(1) (Reissue) para 280.
 - 6 'Crown building' means a building in which there is a Crown interest or Duchy interest: *ibid* s 44(8) (not yet in force: see note 1 supra). 'Crown interest' means an interest belonging to Her Majesty in right of the Crown, or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department: s 44(8) (not yet in force: see note 1 supra). 'Duchy interest' means an interest belonging to Her Majesty in right of the Duchy of Lancaster, or belonging to the Duchy of Cornwall: s 44(8) (not yet in force: see note 1 supra). For the meaning of 'building' see para 305 ante.
 - 7 *Ibid* s 44(1)(a) (not yet in force: see note 1 supra). Section 38 (civil liability for breach of duties imposed by building regulations) (see para 346 post) and any building regulations made by virtue of s 38(1) apply in relation to duties imposed by building regulations in their application in accordance with s 44(1)-(3): s 44(4) (not yet in force: see note 1 supra).
- The provisions of s 44(1), (4)-(10) (not yet in force) apply in relation to the United Kingdom Atomic Energy Authority as if the Authority were a Crown authority, a building belonging to or occupied by the Authority were a Crown building, and the references in s 44(1) (not yet in force) to not being a Crown authority were references to being neither a Crown authority nor the Authority, but the said provisions do not by virtue of s 45(1) apply in relation to dwelling-houses or offices belonging to or occupied by the Authority: s 45(1). The provisions of s 45 are to be brought into force by order made by the Secretary of State under s 134(1) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. Subject to the said provisions as applied by s 45(1) (not yet in force), building regulations and the enactments relating to building regulations do not apply in relation to buildings belonging to or occupied by the Authority, except dwelling-houses and offices: s 45(2) (not yet in force). As to the United Kingdom Atomic Energy Authority see FUEL AND ENERGY vol 19(3) (2007 Reissue) para 1363 et seq.
- 8 For these purposes, 'continuing requirement' means a continuing requirement of building regulations imposed by virtue of *ibid* s 2(1) or s 2(2)(a) or s 2(2)(b) (see para 310 ante): s 44(8) (not yet in force: see note 1 supra).
 - 9 *Ibid* s 44(1)(b) (not yet in force: see note 1 supra).
 - 10 *Ibid* s 44(2)(a) (not yet in force: see note 1 supra). For the meaning of 'inner London' see para 303 note 10 ante.
 - 11 *Ibid* s 44(2)(b) (not yet in force: see note 1 supra).
 - 12 *Ibid* s 44(2) (not yet in force: see note 1 supra).
 - 13 As to the meaning of 'enactment' see para 305 note 2 ante.
 - 14 *Ie* in the case of the Building Act 1984 s 2: see para 310 ante.
 - 15 *Ibid* s 44(3)(a) (not yet in force: see note 1 supra).
 - 16 *Ibid* s 44(3)(b) (not yet in force: see note 1 supra).

17 Ibid s 44(5)(a) (not yet in force: see note 1 supra). For the purposes of s 44(5) (not yet in force), work carried out or proposed to be carried out by or on behalf of a government department acting for another Crown authority must be treated as carried out or proposed to be carried out by or on behalf of that department (and not by or on behalf of the other Crown authority): s 44(7) (not yet in force: see note 1 supra). See note 7 supra.

18 Ibid s 44(5)(b) (not yet in force: see note 1 supra). See note 7 supra.

19 If any question arises under ibid s 44 (not yet in force) as to which Crown authority is entitled to exercise any such powers as are mentioned in s 44(5) (not yet in force), that question must be referred to the Treasury, whose decision is final: s 44(9) (not yet in force: see note 1 supra). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517. See note 7 supra.

20 Ie by virtue of ibid s 8 (see para 315 post) (other than a power that by virtue of s 1(3), Sch 1 para 6 (see para 307 ante) is exercisable otherwise than by a local authority): see s 44(5) (not yet in force: see note 1 supra). For the meaning of 'local authority' see para 301 note 12 ante.

In relation to continuing requirements, references in s 44(5) (not yet in force) to s 8 are references to s 8 as modified by s 2(6) (see para 310 ante): s 44(6) (not yet in force: see note 1 supra). See note 7 supra.

21 But not the requirements of ibid s 8 (see para 315 ante) as to consultation with the local authority: see s 44(5)(i) (not yet in force: see note 1 supra).

22 Ie by virtue of ibid Sch 1 para 3: see para 307 ante.

23 Ibid s 44(5)(i) (not yet in force: see note 1 supra). See note 7 supra.

24 Ibid s 44(5)(ii) (not yet in force: see note 1 supra). See note 7 supra. The text refers to the requirements which apply by virtue of s 10 (see para 318 ante).

25 Ie by virtue of ibid s 44(5) (not yet in force).

26 Ibid s 44(5) (not yet in force: see note 1 supra). See note 7 supra.

UPDATE

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Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

312 Application to the Crown

TEXT AND NOTES--For the purposes of building regulations which, in accordance with the 1984 Act Sch 1 para 8(1)(f) (see PARA 307 NOTE 66), are framed by reference to a change in the occupants of a building, or part, s 44 applies, with any necessary modifications, in relation to the making of a change of occupants as it applies in relation to the carrying out of work: s 44(11) (added by the Sustainable and Secure Buildings Act 2004 s 3(8) (not yet in force)).

NOTE 7--Reference to the 1984 Act s 44(1), (4)-(10) is to s 44(1), (4)-(11): s 45(1) (amended by the 2004 Act s 3(9) (not yet in force)).

NOTE 8--'Continuing requirement' means a continuing requirement of building regulations (1) imposed by virtue of s 2(1) or s 2(2)(a) or s 2(2)(b); or (2) of a kind mentioned in s 2A(2)(a), (b), or (c) and imposed by virtue of s 2A(1) (see PARA 310): 1984 Act s 44(8) (amended by the 2004 Act s 4(4)(b) (not yet in force)).

TEXT AND NOTE 14--Also in the case of the 1984 Act s 2A (continuing requirements in relation to fuel, power and emissions): 1984 Act s 44(3)(a) (amended by the 2004 Act s 4(4)(a) (not yet in force)).

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(2) EXEMPTION FROM, AND RELAXATION OF, BUILDING REGULATIONS

(i) Exemption from Building Regulations

313. Exemption from building regulations.

Building regulations¹ may exempt a prescribed² class of buildings³, services, fittings or equipment from all or any of the provisions of building regulations⁴. The Secretary of State⁵ may by direction exempt from all or any of the provisions of building regulations a particular building, or buildings of a particular class at a particular location, either unconditionally or subject to compliance with any conditions specified in the direction⁶. A person who contravenes a condition specified in such a direction, or permits such a condition to be contravened, is liable on summary conviction to a fine⁷, and also to a further fine for each day on which the offence continues after he is convicted⁸.

Nothing in Part I of the Building Act 1984⁹ with respect to building regulations, and nothing in any building regulations themselves applies in relation to certain specified educational buildings and buildings of statutory undertakers¹⁰. The building regulations do not apply to the erection of any building or extension of¹¹:

- 114 (1) buildings controlled under legislation other than the Building Act 1984 or the building regulations¹²;
- 115 (2) buildings not frequented by people¹³;
- 116 (3) greenhouses and agricultural buildings¹⁴;
- 117 (4) temporary buildings¹⁵;
- 118 (5) ancillary buildings¹⁶;
- 119 (6) small detached buildings¹⁷;
- 120 (7) extensions¹⁸.

Further, the building regulations do not apply to the carrying out of any work to or in connection with such a building or extension, if after the carrying out of that work it is still a building or extension of a kind mentioned in heads (1) to (7) above¹⁹.

1 For the meaning of 'building regulations' see para 306 ante.

2 I.e. prescribed by building regulations: see the Building Act 1984 s 126. The Building Regulations 2000, SI 2000/2531, reg 9, Sch 2 prescribe the buildings so exempted: see the text and notes 11-19 infra.

3 For the meaning of 'building' see para 305 ante.

4 Building Act 1984 s 3(1).

5 As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

6 Building Act 1984 s 3(2). As to whether a bus and a lorry constitute 'temporary' buildings see *Gumbrell v Swale RDC* [1936] 3 All ER 935.

7 The fine imposed is one not exceeding level 5 on the standard scale: see the Building Act 1984 s 3(3). 'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Powers of Criminal Courts (Sentencing) Act 2000 s 128; and MAGISTRATES vol 29(2) (Reissue) para 807.

8 Building Act 1984 s 3(3). The fine imposed must not exceed £50 for each day on which the default continues after conviction: see s 3(3). As to continuing offences see para 427 post.

9 *le ibid* Pt I (ss 1-46) (as amended).

10 See *ibid* s 4(1). Thus Pt I (as amended) and the building regulations do not apply to:

- 6 (1) a building required for the purposes of a school or other educational establishment erected or to be erected according to: (a) plans that have been approved by the Secretary of State; (b) particulars submitted and approved under regulations made under the Education Act 1996 s 544 (as amended) (see EDUCATION vol 15(2) (2006 Reissue) para 1411) or the Education Reform Act 1988 s 218(7) (as amended) (see EDUCATION vol 15(2) (2006 Reissue) para 722) (Building Act 1984 s 4(1)(a) (substituted by the Education Act 1996 s 582(1), Sch 37 para 59; and amended by the School Standards and Framework Act 1998 s 140(3), Sch 31));
- 7 (2) a building belonging to statutory undertakers, the United Kingdom Atomic Energy Authority, or the Civil Aviation Authority and held or used by them for the purposes of their undertaking, unless it is: (a) a house, or (b) a building used as offices or showrooms, and not forming part of a railway station or in the case of the Civil Aviation Authority not being on an aerodrome owned by the Authority (Building Act 1984 s 4(1)(b) (amended by the Airports Act 1986 s 83(5), Sch 6 Pt I)); or
- 8 (3) a building belonging to a person who holds a licence under the Transport Act 2000 Pt I Ch I (ss 1-40) (air traffic services) and held or used by the person for the purpose of carrying out activities authorised by the licence, unless it is a house, or a building used as offices or showrooms (Building Act 1984 s 4(1)(c)).

As from a day to be appointed, head (1)(b) *supra* is substituted so as to remove the reference to the Education Reform Act 1988 s 218(7): see the Education Act 2002 s 215(1), Sch 21 para 6. At the date at which this volume states the law no such day has been appointed. The words 'the United Kingdom Atomic Energy Authority', in head (2) *supra* (together with the Building Act 1984 Sch 6 para 4), cease to have effect upon the coming into force of the repeal of the Atomic Energy Authority Act 1954 s 5(5) (as amended) (see FUEL AND ENERGY vol 19(3) (2007 Reissue) para 1370) contained in the Building Act 1984 s 133(2), Sch 7: s 4(2). At the date at which this volume states the law no order bringing into force the repeal of the Atomic Energy Authority Act 1954 s 5(5) (as amended) had been made. As to the United Kingdom Atomic Energy Authority see FUEL AND ENERGY vol 19(3) (2007 Reissue) para 1363 et seq.

'Statutory undertakers' means persons authorised by an enactment or statutory order to construct, work or carry on a railway, canal, inland navigation, dock harbour, tramway, or other public undertaking, but does not include a universal service provider (within the meaning of the Postal Services Act 2000 (see POST OFFICE)), the Post Office company (within the meaning of Pt IV (see POST OFFICE)) or any subsidiary or wholly-owned subsidiary (within the meaning given by the Companies Act 1985 s 736 (as substituted) (see COMPANIES vol 14 (2009) PARA 25)) of the Post Office company: Building Act 1984 s 126 (definition amended by the Water Act 1989 s 190(1), (3), Sch 25 para 70(4), Sch 27 Pt I; and the Postal Services Act 2000 (Consequential Modifications No 1) Order 2001, SI 2001/1149, art 3(1), Sch 1 para 61). As to the meaning of 'enactment' see para 305 note 2 ante. For the meaning of 'construct' see para 307 note 3 ante. 'House' means a dwelling-house, whether a private dwelling-house or not: Building Act 1984 s 126. 'School' includes a Sunday school or a Sabbath school: s 126. For the meaning of 'erect' see para 307 note 3 ante. As to the meaning of 'plans' see para 307 note 8 ante.

11 Building Regulations 2000, SI 2000/2531, reg 9(a).

12 *Ibid* Sch 2 Class I. The exempt buildings for these purposes are: (1) any building the construction of which is subject to the Explosives Act 1875 and the Explosives Act 1923 (see EXPLOSIVES) (Building Regulations 2000, SI 2000/2531, Sch 2 Class I para 1); (2) any building (other than a building containing a dwelling or a building used for office or canteen accommodation) erected on a site in respect of which a licence under the Nuclear Installations Act 1965 (see FUEL AND ENERGY) is for the time being in force (Building Regulations 2000, SI 2000/2531, Sch 2 Class I para 2); and (3) a building included in the schedule of monuments maintained under the Ancient Monuments and Archaeological Areas Act 1979 s 1 (as amended) (see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARAS 1010, 1011) (Building Regulations 2000, SI 2000/2531, Sch 2 Class 1 para 3).

13 Ibid Sch 2 Class II. The type of building exempt for these purposes is a detached building into which people do not normally go, or into which people go only intermittently and then only for the purpose of inspecting or maintaining fixed plant or machinery, unless any point of such a building is less than one and a half times its height from any point of a building into which people can or do normally go, or the nearest point of the boundary of the curtilage of that building, whichever is the nearer: Sch 2 Class II.

14 Ibid Sch 2 Class III. The buildings exempt for these purposes are: (1) greenhouses (Sch 2 Class III para 1); and (2) buildings used for agriculture, or buildings principally for the keeping of animals, provided in each case that: (a) no part of the building is used as a dwelling; (b) no point of the building is less than one-and-a-half times its height from any point of a building which contains sleeping accommodation; and (c) the building is provided with a fire exit which is not more than 30 metres from any point in the building (Sch 2 Class III para 2). The descriptions of buildings in Sch 2 Class III paras 1, 2 do not include a greenhouse or a building used for agriculture if the principal purpose for which they are used is retailing, packing or exhibiting: Sch 2 Class III para 3. For the purposes of Sch 2 Class III para 2, 'agriculture' includes horticulture, fruit growing, the growing of plants for seed and fish farming: Sch 2 Class III para 4.

15 Ibid Sch 2 Class IV. The text refers a building which is not intended to remain where it is erected for more than 28 days: Sch 2 Class IV. For these purposes, 'day' means any period of 24 hours commencing at midnight and excludes any Saturday, Sunday, Bank holiday or public holiday: reg 2(1).

16 Ibid Sch 2 Class V. The buildings exempt for these purposes are: (1) a building on a site, being a building which is intended to be used only in connection with the disposal of buildings or building plots on that site (Sch 2 Class V para 1); (2) a building on the site of construction or civil engineering works, which is intended to be used only during the course of those works and contains no sleeping accommodation (Sch 2 Class V para 2); (3) a building, other than a building containing a dwelling or used as an office or showroom, erected for use on the site of and in connection with a mine or quarry (Sch 2 Class V para 3).

17 Ibid Sch 2 Class VI. The buildings exempt for these purposes are: (1) a detached single storey building, having a floor area which does not exceed 30m², which contains no sleeping accommodation and is a building no point of which is less than one metre from the boundary of its curtilage, or which is constructed substantially of non-combustible material (Sch 2 Class VI para 1); (2) a detached building designed and intended to shelter people from the effects of nuclear, chemical or conventional weapons, and not used for any other purpose, if its floor area does not exceed 30m², and the excavation for the building is no closer to any exposed part of another building or structure than a distance equal to the depth of the excavation plus one metre (Sch 2 Class VI para 2); (3) a detached building, having a floor area which does not exceed 15m², which contains no sleeping accommodation (Sch 2 Class VI para 3). For these purposes, 'floor area' means the aggregate area of every floor in a building or extension, calculated by reference to the finished internal faces of the walls enclosing the area, or if at any point there is no such wall, by reference to the outermost edge of the floor: reg 2(1).

18 Ibid Sch 2 Class VII. The text refers to the extension of a building by the addition at ground level of a conservatory, porch, covered yard or covered way, or a carport open on at least two sides, where the floor area of that extension does not exceed 30m², provided that in the case of a conservatory or porch which is wholly or partly glazed, the glazing satisfies the requirements of Sch 1 Pt N (see para 308 ante): Sch 2 Class VII.

19 Ibid reg 9(b).

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Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

313 Exemption from building regulations

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTES 9, 10--1984 Act s 4 prospectively repealed: Sustainable and Secure Buildings Act 2004 s 5, Schedule.

NOTE 10--Offices and showrooms that form part of a railway station are covered by the exemption under the Building Act 1984 s 4(1)(b): *Manchester City Council v Railtrack plc* [2003] 1 EG 66 (CS). Definition of 'statutory undertakers' amended: SI 2009/1941.

TEXT AND NOTE 11--Now the building regulations do not apply, subject to (1) the requirements of SI 2000/2531 Sch 1 Pt P which apply to any greenhouse, any small detached building of a specified class, and any extension of a building of a specified class, which in any case receive their electricity from a source shared with or located inside a dwelling; (2) the energy efficiency requirements of SI 2000/2531 which apply to the erection of any building of a kind falling within this head, the extension of any such building, other than an extension falling within a specified class and the carrying out of any work to or in connection with any such building or extension; for the meaning of 'energy efficiency requirements' see PARA 308; a building falls within head (2) if it is a roofed construction having walls, uses energy to condition the indoor climate and does not fall within the following categories: (a) buildings which are (i) listed in accordance with the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1 (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1091); (ii) in a conservation area designated in accordance with s 69 (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1169); or (iii) included in the schedule of monuments maintained under the Ancient Monuments and Archaeological Areas Act 1979 s 1 (see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1010), where compliance with the energy efficiency requirements would unacceptably alter their character or appearance; (b) buildings which are used primarily or solely as places of worship; (c) temporary buildings with a planned time of use of two years or less, industrial sites, workshops and non-residential agricultural buildings with low energy demand; (d) stand-alone buildings other than dwellings with a total useful floor area of less than 50m²; for these purposes, 'building' means the building as a whole or parts of it that have been designed or altered to be used separately; 'industrial sites', 'low energy demand', 'non-residential agricultural buildings', 'places of worship', 'stand-alone', 'total useful floor area' and 'workshops' have the same meaning as in European Parliament and EC Council Directive 2002/91 on the energy performance of buildings: SI 2000/2531 reg 9 (amended by SI 2004/3210, SI 2006/652). See also SI 2000/2531 reg 9(1A) (requirements of hot and cold water supply systems) (added by SI 2009/1219).

NOTE 12--Now head (1) any building in which explosives are manufactured or stored under a licence granted under the Manufacture and Storage of Explosives Regulations 2005, SI 2000/2531: SI 2000/2531 Sch 2 Class 1 para 1 (substituted by SI 2005/1082).

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314. Exemption of public bodies from procedural requirements of building regulations.

Building regulations¹ may exempt a local authority², a county council, or any other body that acts under an enactment³ for public purposes and not for its own profit and is prescribed⁴ for these purposes, from compliance with any requirements of those regulations that are not substantive requirements⁵. A local authority, county council or other body that is so exempted is referred to as an 'exempt body'⁶. Without prejudice to the obligation of an exempt body to comply with substantive requirements of building regulations, the function of enforcing building regulations that is conferred on local authorities⁷ is not exercisable in relation to work carried out⁸ by an exempt body, and accordingly nothing in the provision relating to the removal or alteration of offending work⁹ applies in relation to work so carried out¹⁰, and a local authority may not institute proceedings¹¹ for a contravention¹² of building regulations by an exempt body¹³.

1 For the meaning of 'building regulations' see para 306 ante.

2 For the meaning of 'local authority' see para 301 note 12 ante.

3 As to the meaning of 'enactment' see para 305 note 2 ante.

4 I.e. prescribed by building regulations: see the Building Act 1984 s 126. The Metropolitan Police Authority has been so prescribed and is exempt from compliance with the building regulations in so far as the requirements in the regulations are not substantive requirements: see the Building Regulations 2000, SI 2000/2531, reg 10(1), (2).

5 Building Act 1984 s 5(1). For the meaning of 'substantive requirements' see para 311 note 6 ante.

6 Ibid s 5(2).

7 I.e. by ibid s 91(2) (as amended): see para 352 post.

8 The reference to the carrying out of work includes a reference to the making of a material change of use: ibid s 5(4). As to material change of use see para 309 ante.

9 I.e. ibid s 36(1)-(5): see para 344 post.

10 Ibid s 5(3)(a).

11 I.e. under ibid s 35: see para 343 post.

12 As to the meaning of 'contravention' see para 310 note 10 ante.

13 Building Act 1984 s 5(3)(b).

UPDATE

306-324 Power to make building regulations ... Particulars and plans where a building notice is given

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(2) EXEMPTION FROM, AND RELAXATION OF, BUILDING REGULATIONS/(ii) Relaxation of Building Regulations/315. Relaxation of building regulations.

(ii) Relaxation of Building Regulations

315. Relaxation of building regulations.

If on an application for a direction¹ the Secretary of State² considers that the operation of a requirement in building regulations³ would be unreasonable in relation to the particular case to which the application relates, he may, after consultation with the local authority⁴, give such a direction dispensing with or relaxing that requirement⁵. If building regulations so provide as regards a requirement contained in the regulations, the power to dispense with or relax that requirement is exercisable by the local authority (instead of by the Secretary of State after consultation with the local authority)⁶. If building regulations so provide as regards any requirement contained in the regulations, and a public body⁷ considers that the operation of any such requirement would be unreasonable in relation to any particular work carried out or proposed to be carried out by or on behalf of the public body, the public body may give a direction dispensing with or relaxing that requirement⁸.

1 Ie under the Building Act 1984 s 8: see the text and notes 2-8 infra.

2 As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

3 For the meaning of 'building regulations' see para 306 ante. Building regulations may provide as regards a requirement contained in the regulations that the Building Act 1984 s 8(1)-(5) (see the text and notes 4-8 infra) does not apply: s 8(6).

4 For the meaning of 'local authority' see para 301 note 12 ante.

5 Building Act 1984 s 8(1). Such a direction may be made in relation to continuing requirements, but it ceases to have effect at the end of a period specified in the direction: see s 2(6); and para 310 ante.

6 Ibid s 8(2). Building regulations made by virtue of s 8(2) may except applications of any description: s 8(3). The power under s 8(1) to dispense with or relax any requirement is exercisable by the local authority: Building Regulations 2000, SI 2000/2531, reg 11(1). Any notification by the local authority to an applicant that they have refused his application to dispense with or relax any requirement of the building regulations must inform the applicant of the effect of the Building Act 1984 s 39(1), (3) (appeal against refusal etc to relax building regulations): Building Regulations 2000, SI 2000/2531, reg 11(2).

7 For these purposes, 'public body' means a local authority, a county council, or any other body that is prescribed for the purposes of the Building Act 1984 s 5 (see para 314 ante): s 8(5). 'Prescribed' means prescribed by building regulations: see s 126.

8 Ibid s 8(4).

UPDATE

306-324 Power to make building regulations ... Particulars and plans where a building notice is given

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

315 Relaxation of building regulations

TEXT AND NOTES--The 1984 Act s 8(1)-(5) does not apply to SI 2000/2531 reg 17C (see PARA 328A.1) or, in the case of existing buildings with a total useful floor area over 1,000m², the energy efficiency requirements in SI 2000/2531: reg 11(1), (3) (reg 11(1) amended, reg 11(3) added, by SI 2006/652). For the meaning of 'energy efficiency requirements' see PARA 308.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(2) EXEMPTION FROM, AND RELAXATION OF, BUILDING REGULATIONS/(ii) Relaxation of Building Regulations/316. Application for relaxation.

316. Application for relaxation.

An application for relaxation of building regulations¹ must be in such form and must contain such particulars as may be prescribed². The application must be made to the local authority³, and, except where the power of giving the direction is exercisable by the local authority, the local authority must at once transmit the application to the Secretary of State⁴ and give notice to the applicant that it has been so transmitted⁵. An application by a local authority in connection with a building⁶ or proposed building in the area of that authority must be made to the Secretary of State, except where the power of giving the direction is exercisable by that authority⁷.

1 le under the Building Act 1984 s 8(1) or s 8(2): see para 315 ante.

2 Ibid s 9(1). 'Prescribed' means prescribed by building regulations: see s 126. For the meaning of 'building regulations' see para 306 ante.

3 For the meaning of 'local authority' see para 301 note 12 ante.

4 As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

5 Building Act 1984 s 9(2).

6 For the meaning of 'building' see para 305 ante.

7 Building Act 1984 s 9(3).

UPDATE

306-324 Power to make building regulations ... Particulars and plans where a building notice is given

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(2) EXEMPTION FROM, AND RELAXATION OF, BUILDING REGULATIONS/(ii) Relaxation of Building Regulations/317. Existing work.

317. Existing work.

Neither the Secretary of State¹ nor a local authority² may give a direction³ for relaxation of building regulations⁴ that will affect the application of building regulations to work that has been carried out before the giving of the direction⁵ if the local authority has, before the making of the application for the direction, become entitled⁶ to pull down, remove or alter the work to which the application relates⁷, or if, when the application is made, there is in force an injunction or other direction given by a court that requires the work to be pulled down, removed or altered⁸. After the making of such an application for a direction in relation to existing work, and until the application is withdrawn or finally disposed of, no notice to pull down, remove or alter the work⁹ can be given as regards the work to which the application relates on the ground that it contravenes¹⁰ the requirement to which the application relates¹¹.

If an application for such a direction in relation to existing work is made after any person has in consequence of the carrying out of the work to which the application relates in contravention of building regulations, become liable to a penalty continuing from day to day, the daily penalty is not recoverable in respect of any day after the making of the application and before it is withdrawn or finally disposed of¹². In a case where an application is withdrawn or is finally disposed of without any direction being given, the Secretary of State or, as the case may be, the local authority may order that the daily penalty is not recoverable in respect of any day during such further period not exceeding 28 days as may be specified in the order¹³. The giving of such a direction in relation to existing work does not affect the liability of a person for an offence committed before the giving of the direction, except so far as that liability depends on the continuation of the offence after the giving of the direction¹⁴.

1 As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

2 For the meaning of 'local authority' see para 301 note 12 ante.

3 I.e. under the Building Act 1984 s 8: see para 315 ante.

4 For the meaning of 'building regulations' see para 306 ante.

5 Building Act 1984 s 9(4), Sch 2 para 1.

6 I.e. under *ibid* s 36(3): see para 344 post.

7 *Ibid* Sch 2 para 2(a).

8 *Ibid* Sch 2 para 2(b).

9 I.e. a notice under *ibid* s 36(1), (2): see para 344 post.

10 As to the meaning of 'contravention' see para 310 note 10 ante.

11 Building Act 1984 Sch 2 para 3(1). If an application for such a direction is made less than 12 months after the completion of the work to which the application relates, s 36(4) (see para 344 post) does not prevent the giving of such a notice as regards that work at any time within a period of three months from the date on which the application is withdrawn or finally disposed of: Sch 2 para 3(2). If an application for such a direction is made after a notice to pull down, remove or alter the work under s 36 (see para 344 post) has been given on the ground that the work to which the application relates contravenes the requirement to which the application relates (not being an application prohibited by Sch 2 para 2 (see the text to notes 6-8 supra)), if a person to

whom a notice has been given under s 36(1), (2) fails to comply with the notice within a period expiring 28 days after the application is withdrawn or finally disposed of, or such longer period as a magistrates' court may allow, the local authority may pull down or remove the work in question, or effect such alterations in it as they deem necessary, and may recover from him the expenses reasonably incurred by them in doing so: s 36(3), Sch 2 para 3(3). If, before the giving of such a direction, such a notice has been given, and the contravention of building regulations by virtue of which the notice was given comes to an end when the direction is given, the local authority is not, after the giving of the direction, entitled to proceed under s 36(3) by virtue of that notice: Sch 2 para 6.

The provisions of Sch 2 para 3(1), (3), (4) do not apply to an application that is a repetition, or substantially a repetition, of a previous application under s 8 (see para 315 ante): Sch 2 para 4. As to continuing offences see para 427 post.

12 Ibid Sch 2 para 3(4).

13 Ibid Sch 2 para 3(5).

14 Ibid Sch 2 para 5.

UPDATE

306-324 Power to make building regulations ... Particulars and plans where a building notice is given

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(2) EXEMPTION FROM, AND RELAXATION OF, BUILDING REGULATIONS/(ii) Relaxation of Building Regulations/318. Advertisement of proposal for relaxation.

318. Advertisement of proposal for relaxation.

Not less than 21 days before giving a direction¹ for the relaxation of building regulations² in respect of any particular work, the Secretary of State³, the local authority⁴ or the public body⁵, as the case may be, must publish in a local newspaper circulating in the area where the site of the work is situated a notice⁶:

- 121 (1) indicating the situation and nature of the work and the requirement to be dispensed with or relaxed⁷; and
- 122 (2) stating that representations with regard to the effect that the direction may have on public health or safety may be made by a date specified in the notice, being a date not less than 21 days from the date of the notice⁸.

Where the direction is proposed to be made on an application, the Secretary of State or the local authority may, as a condition of entertaining the application, require the applicant to pay or undertake to pay the cost of publication⁹. No such notice need be published where it appears to the Secretary of State, the local authority or the public body, as the case may be, that any effect that the direction may have on public health or safety will be limited to premises¹⁰ adjoining the site of the work, but in that case he or it must give such a notice to the owner¹¹ and occupier of those premises¹².

No such notices¹³ need be so published or given where the work affects only an internal part of a building¹⁴. The Secretary of State may, instead of himself publishing or giving such notices, require the local authority to so give or publish the notices¹⁵. Before giving the direction, the Secretary of State, the local authority or the public body must consider any representations duly made in pursuance of such notices so published or given¹⁶. If, after a local authority has received such representations, it refuses the application to which the representations relate and an appeal is brought against its refusal, the local authority must transmit to the Secretary of State copies of those representations¹⁷.

1 le under the Building Act 1984 s 8(1), (2) or s 8(4): see para 315 ante.

2 For the meaning of 'building regulations' see para 306 ante.

3 As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

4 For the meaning of 'local authority' see para 301 note 12 ante.

5 This term is not expressly defined for the purposes of the Building Act 1984 s 10; but see s 8(5); and para 315 ante.

6 As to the form, authorisation and service of notices see paras 418-420 post.

7 Building Act 1984 s 10(1)(a).

8 Ibid s 10(1)(b).

9 Ibid s 10(1).

10 As to the meaning of 'premises' see para 310 note 2 ante.

- 11 For the meaning of 'owner' see para 310 note 2 ante.
- 12 Building Act 1984 s 10(2).
- 13 Ie under ibid s 10(1), (2): see the text and notes 1-12 supra.
- 14 Ibid s 10(3). For the meaning of 'building' see para 305 ante.
- 15 Ibid s 10(4).
- 16 Ibid s 10(5).
- 17 Ibid s 10(6).

UPDATE

306-324 Power to make building regulations ... Particulars and plans where a building notice is given

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(2) EXEMPTION FROM, AND RELAXATION OF, BUILDING REGULATIONS/(ii) Relaxation of Building Regulations/319. Type relaxation of building regulations.

319. Type relaxation of building regulations.

If the Secretary of State¹ considers that the operation of a requirement of building regulations² would be unreasonable in relation to a particular type of building matter³, he may, either on an application made to him or of his own accord, give a direction dispensing with or relaxing that requirement generally in relation to that type of building matter, either unconditionally⁴, or subject to compliance with any conditions specified in the direction, being conditions with respect to matters directly connected with the dispensation or relaxation⁵. Such a direction, if it so provides, ceases to have effect at the end of such period as may be specified in the direction⁶ and it may be varied or revoked by a subsequent direction of the Secretary of State⁷. Building regulations may⁸ require a person making such an application to pay the Secretary of State the prescribed⁹ fee, and such regulations may prescribe different fees for different cases¹⁰, and the Secretary of State may in a particular case remit the whole or part of a fee so payable¹¹. Before giving such a direction, the Secretary of State must consult such bodies as appear to him to be representative of the interests concerned¹². Where the Secretary of State gives such a direction, he must publish notice of that fact in such manner as he thinks fit¹³. A person who contravenes a condition specified in a direction so given, or permits such a condition to be contravened¹⁴, is liable on summary conviction to a fine¹⁵ and is also subject to a further fine for each day on which the offence continues after he is convicted¹⁶.

If at any time such a direction dispensing with or relaxing a requirement of building regulations ceases to have effect by virtue of its period of operation expiring, or is varied or revoked by direction of the Secretary of State, that fact does not affect the continued operation of the direction, with any conditions specified in it, in a case in which before that time plans¹⁷ of the proposed work were, in accordance with building regulations, deposited¹⁸ with a local authority¹⁹, or a building notice was served²⁰ in pursuance of the London Building Acts (Amendment) Act 1939²¹.

1 As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

2 For the meaning of 'building regulations' see para 306 ante.

3 For these purposes, 'building matter' means any building or other matter whatsoever to which building regulations are in any circumstances applicable: Building Act 1984 s 11(8). For the meaning of 'building' see para 305 ante.

4 Ibid s 11(1)(a).

5 Ibid s 11(1)(b).

6 Ibid s 11(2)(a).

7 Ibid s 11(2)(b).

8 Ie without prejudice to ibid s 1(3), Sch 1 para 10: see para 307 ante.

9 Ie prescribed by building regulations: see ibid s 126.

10 Ibid s 11(3)(a).

11 Ibid s 11(3)(b).

12 Ibid s 11(4).

13 Ibid s 11(5).

14 As to the meaning of 'contravene' see para 310 note 10 ante.

15 The fine imposed is one not exceeding level 5 on the standard scale: see the Building Act 1984 s 11(6). As to the standard scale see para 313 note 7 ante.

16 Ibid s 11(6). The fine imposed must not exceed £50 for each day on which the default continues after conviction: see s 11(6). As to continuing offences see para 427 post.

17 As to the meaning of 'plans' see para 307 note 8 ante.

18 In the Building Act 1984, a reference to the deposit of plans in accordance with building regulations is a reference to the deposit of plans in accordance with building regulations for the purposes of s 16 (as amended) (see para 329 post), unless the context otherwise requires: s 124.

19 Ibid s 11(7)(a). For the meaning of 'local authority' see para 301 note 12 ante.

20 In pursuance of the London Building Acts (Amendment) Act 1939 s 83 (repealed). As to building notices under s 83 (repealed) see *LCC v District Surveyors' Association and Willis* [1909] 2 KB 138, DC; *Galbraith Bros v Dicksee* (1910) 74 JP 348, DC; *Wheeler v Gray* (1859) 28 LJCP 200, Ex Ch; *Holliday and Greenwood Ltd v District Surveyors' Association and Dicksee* [1914] 2 KB 803.

21 Building Act 1984 s 11(7)(b) (amended by the Local Government Act 1985 s 102, Sch 17).

UPDATE

306-324 Power to make building regulations ... Particulars and plans where a building notice is given

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

319 Type relaxation of building regulations

TEXT AND NOTES 20, 21--1984 Act s 11(7)(b) repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(2) EXEMPTION FROM, AND RELAXATION OF, BUILDING REGULATIONS/(ii) Relaxation of Building Regulations/320. Consultation with fire authority.

320. Consultation with fire authority.

Where, in the case of a requirement as to:

- 123 (1) structural fire precautions¹;
- 124 (2) the provision of means of escape from buildings² in case of fire³; or
- 125 (3) the provision of means for securing that such means of escape can be safely and effectively used at all material times⁴,

contained in building regulations⁵, the power to dispense with or relax that requirement⁶ is exercisable⁷ by a local authority⁸, or a public body⁹ proposes to exercise the power conferred on it¹⁰ to dispense with or relax that requirement, the local authority or public body, if they are not the fire authority¹¹, must before exercising the power in relation to any premises¹² or proposed premises consult the fire authority¹³.

1 Building Act 1984 s 15(1)(a).

2 For the meaning of 'building' see para 305 ante.

3 Building Act 1984 s 15(1)(b).

4 Ibid s 15(1)(c).

5 For the meaning of 'building regulations' see para 306 ante.

6 Is conferred by the Building Act 1984 s 8(1): see para 315 ante.

7 Is by virtue of ibid s 8(2): see para 315 ante.

8 For the meaning of 'local authority' see para 301 note 12 ante.

9 For the meaning of 'public body' see para 315 note 7 ante; definition applied by the Building Act 1984 s 15(2).

10 Is by ibid s 8(4): see para 315 ante.

11 For these purposes, 'fire authority' has the same meaning as in the Fire Precautions Act 1971 s 43(1) (see FIRE SERVICES vol 18(2) (Reissue) para 17): Building Act 1984 s 126.

12 As to the meaning of 'premises' see para 310 note 2 ante.

13 Building Act 1984 s 15(1). As to the making of building regulations to modify or repeal the provisions of s 15, on the ground of inconsistency with other provisions see s 1(3), Sch 1 para 11(1); and para 307 ante.

UPDATE

306-324 Power to make building regulations ... Particulars and plans where a building notice is given

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

320 Consultation with fire authority

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTES 11-13--References to the fire authority are now to the fire and rescue authority: 1984 Act ss 15(1), 126 (amended by the Fire and Rescue Services Act 2004 Sch 1 para 57).

NOTE 11--1971 Act replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(3) APPROVED DOCUMENTS/321. Approval of documents for purposes of building regulations.

(3) APPROVED DOCUMENTS

321. Approval of documents for purposes of building regulations.

For the purpose of providing practical guidance with respect to the requirements of any provision of building regulations¹ the Secretary of State² or a body designated³ by him for these purposes may approve and issue any document⁴ (whether or not prepared by him or by the body concerned), or approve any document issued or proposed to be issued otherwise than by him or by the body concerned, if in the opinion of the Secretary of State or, as the case may be, the body concerned the document is suitable for that purpose⁵. Such an approval takes effect in accordance with a notice⁶ that is issued by the Secretary of State or, as the case may be, the body giving the approval and that identifies the approved document in question, states the date on which the approval of it is to take effect, and specifies the provisions of building regulations for the purposes of which the document is approved⁷. The Secretary of State or, as the case may be, the body that gave the approval may from time to time approve and issue a revision of the whole or any part of an approved document⁸ issued by him or it for these purposes⁹, and approve any revision or proposed revision of the whole or any part of an approved document¹⁰. The Secretary of State or, as the case may be, the body that gave the approval may withdraw his or its approval of a document, and such a withdrawal of approval takes effect in accordance with a notice that is issued by the Secretary of State or body concerned and that identifies the approved document in question¹¹, and which states the date on which the approval of it is to cease to have effect¹².

A failure on the part of a person to comply with an approved document does not of itself render him liable to any civil or criminal proceedings¹³. However, if, in any proceedings whether civil or criminal, it is alleged that a person has at any time contravened¹⁴ a provision of building regulations a failure to comply with a document that at that time was approved for the purposes of that provision may be relied upon as tending to establish liability¹⁵, and proof of compliance with such a document may be relied on as tending to negative liability¹⁶.

1 For the meaning of 'building regulations' see para 306 ante.

2 As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

3 The power to designate a body for the purposes of the Building Act 1984 s 6 is exercisable by order made by statutory instrument, which is subject to annulment in pursuance of a resolution of either House of Parliament: s 6(8). At the date at which this volume states the law no such order had been made.

4 References in *ibid* ss 6, 7 (compliance or non-compliance with approved documents) (see the text and notes 5-16 *infra*) to a document include references to a part of a document; and accordingly, in relation to a document of which part only is approved, a reference in s 6(2)-(8) or in s 7 to the approved document is a reference only to the part of it that is approved: s 6(2).

5 *Ibid* s 6(1).

6 In any proceedings, whether civil or criminal a document purporting to be a notice so issued as mentioned in *ibid* s 6(3) must be taken to be such a notice unless the contrary is proved (s 7(2)(a)), and a document that appears to the court to be the approved document to which such a notice refers must be taken to be that approved document unless the contrary is proved (s 7(2)(b)).

7 Ibid s 6(3).

8 References in *ibid* s 6(4), (5) and in s 7 to an approved document are references to that document as it has effect for the time being, regard being had to any revision of the whole or any part of it that has been approved under s 6(4): s 6(6).

9 Ibid s 6(4)(a). Where a body ceases to be a body designated by the Secretary of State for the purposes of s 6, the provisions of s 6(4), (5) (see the text and notes 10-12 *infra*) have effect as if any approval given by that body had been given by the Secretary of State: s 6(7).

10 Ibid s 6(4)(b). Section 6(3), with the necessary modifications, applies in relation to an approval that is given under s 6(4) to a revision as it applies in relation to an approval that is given under s 6(1) to a document: s 6(4). As to the meaning of 'modifications' see para 303 note 22 *ante*. See note 9 *supra*.

11 Ibid s 6(5)(a). See note 9 *supra*.

12 Ibid s 6(5)(b). See note 9 *supra*.

13 Ibid s 7(1). The burden of showing non-compliance with an approved document falls on the local authority, but once it has shown such non-compliance, the burden is on the builder to show that the works do nonetheless comply with the building regulations: *Rickards and Rickards v Kerrier District Council* (1987) 151 JP 625.

14 As to the meaning of 'contravention' see para 310 note 10 *ante*.

15 Building Act 1984 s 7(1)(a). See also note 13 *supra*.

16 Ibid s 7(1)(b).

UPDATE

306-324 Power to make building regulations ... Particulars and plans where a building notice is given

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(4) TYPE APPROVAL/322. Power to approve type of building matter.

(4) TYPE APPROVAL

322. Power to approve type of building matter.

As from a day to appointed, the following provisions have effect¹ with a view to enabling the Secretary of State², either on an application³ made to him or of his own accord, to approve a particular type of building matter⁴ as complying, either generally or in a class of case, with particular requirements of building regulations⁵. Such an application for the approval of a type of building matter must comply with any requirements of building regulations as to the form of such applications and the particulars to be included in them⁶. Where the Secretary of State so approves a type of building matter as complying with particular requirements of building regulations either generally or in a class of case⁷, he may issue a certificate to that effect specifying: (1) the type of building matter to which the certificate relates⁸; (2) the requirements of building regulations to which the certificate relates⁹; and (3) where applicable, the class or classes of case to which the certificate applies¹⁰. Such a certificate, if it so provides, ceases to have effect at the end of such period as may be specified in the certificate¹¹. If, while such a certificate is in force, it is found, in a particular case involving building matter of the type to which the certificate relates, that the building matter in question is of that type, and the case is one to which the certificate applies, that building matter is in that particular case deemed to comply with the requirements of building regulations to which the certificate relates¹².

The Secretary of State may vary such a certificate, either on an application¹³ made to him or of his own accord¹⁴. However, in the case of a certificate issued on an application made by a person¹⁵, the Secretary of State, except where he varies it on the application of that person, must before varying it give that person reasonable notice that he proposes to do so¹⁶. The Secretary of State may revoke a certificate so issued¹⁷, but, before doing so in the case of a certificate issued on an application made by a person¹⁸, he must give the person on whose application the certificate was issued reasonable notice that he proposes to do so¹⁹. Where the Secretary of State issues such a certificate or varies or revokes a certificate so issued, he must publish notice of that fact in such manner as he thinks fit²⁰.

The Secretary of State may by building regulations delegate to a person or body, to such extent and subject to such conditions as the Secretary of State may think fit, the powers of approval conferred on him by the provisions described above²¹.

1 In so far as the Building Act 1984 s 12 (as amended) enables regulations to be made, it came into force on 1 December 1984 by virtue of s 134(2) (as amended). At the date at which this volume states the law no order had been made bringing s 12 (as amended) into force for remaining purposes.

2 As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

3 Building regulations may require a person making an application under the Building Act 1984 s 12(1) (not yet in force) to pay the Secretary of State the prescribed fee, and, without prejudice to Sch 1 para 10 (see para 307 ante), regulations so made may prescribe different fees for different cases, and the Secretary of State may in a particular case remit the whole or part of a fee so payable: s 12(7). For the meaning of 'building regulations' see para 306 ante. 'Prescribed means prescribed by building regulations: see s 126.

4 For the meaning of 'building matter' see para 319 note 3 ante; definition applied by virtue of *ibid* s 12(12) (not yet in force).

5 *Ibid* s 12(1) (not yet in force).

6 Ibid s 12(2) (not yet in force).

7 For the purposes of ibid s 12(3) (not yet in force) (see the text and notes 8-10 infra), a class of case may be framed in any way that the Secretary of State thinks fit: s 12(11) (not yet in force).

8 Ibid s 12(3)(a) (not yet in force). See note 12 infra.

9 Ibid s 12(3)(b) (not yet in force). See note 12 infra.

10 Ibid s 12(3)(c) (not yet in force). See note 12 infra.

11 Ibid s 12(4) (not yet in force). See note 12 infra.

12 Ibid s 12(5) (not yet in force). If at any time a certificate under s 12(3) (not yet in force) (see the text to notes 7-10 supra) ceases to have effect by virtue of s 12(4) (not yet in force) (see the text to note 11 supra), or is varied or revoked under s 12(6) (not yet in force) (see the text to notes 13-14 infra) or s 12(8) (not yet in force) (see the text to notes 17-19 infra), that fact does not affect the continued operation of s 12(5) (not yet in force) by virtue of that certificate in a case in which before that time plans of the proposed work were, in accordance with building regulations, deposited with a local authority (s 12(10)(a) (not yet in force)), or a building notice was served in pursuance of the London Building Acts (Amendment) Act 1939 s 83 (repealed) (Building Act 1984 s 12(10)(b) (not yet in force) (amended by the Local Government Act 1985 s 102, Sch 17)). As to the meaning of 'plans' see para 307 note 8 ante. As to references to the deposit of plans in accordance with building regulations see para 319 note 18 ante.

13 Building regulations may require a person making an application under the Building Act 1984 s 12(6) (not yet in force) to pay the Secretary of State the prescribed fee, and, without prejudice to Sch 1 para 10 (see para 307 ante), regulations so made may prescribe different fees for different cases, and the Secretary of State may in a particular case remit the whole or part of a fee so payable: s 12(7).

14 Ibid s 12(6) (not yet in force). See note 12 supra.

15 Ie under ibid s 12(1) (not yet in force): see the text to notes 1-5 supra.

16 Ibid s 12(6) (not yet in force). See note 12 supra. For the purposes of any variation of a certificate under s 12(6) (not yet in force), a class of case may be framed in any way that the Secretary of State thinks fit: s 12(11) (not yet in force).

17 Ie under ibid s 12(3) (not yet in force): see the text to notes 7-10 supra.

18 Ie under ibid s 12(1) (not yet in force): see the text to notes 1-5 supra.

19 Ibid s 12(8) (not yet in force). See note 12 supra.

20 Ibid s 12(9) (not yet in force).

21 Ibid s 13(1). So far as those powers are for the time being so delegated to a person or body, s 12 (not yet in force), except s 12(7) (not yet in force) (see note 13 supra) as far as the end of s 12(7)(a) (not yet in force), and any building regulations made by virtue of s 12(7) (not yet in force) (subject to any prescribed conditions) have effect in relation to that person or body with the substitution of references to that person or body for references to the Secretary of State: s 13(2).

UPDATE

306-324 Power to make building regulations ... Particulars and plans where a building notice is given

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

322 Power to approve type of building matter

NOTE 12--1984 Act s 12(1)(b) repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(5) PLANS AND NOTICES/(i) Giving of Notices, Plans and Certificates/323. Giving of a building notice or deposit of plans.

(5) PLANS AND NOTICES

(i) Giving of Notices, Plans and Certificates

323. Giving of a building notice or deposit of plans.

A person who intends to carry out building work¹ or to make a material change of use² must give³ to the local authority a building notice⁴, or deposit full plans⁵ with the local authority⁶. A person must deposit full plans where he intends to carry out: (1) building work in relation to a building⁷ put or intended to be put to a use which is a relevant use⁸; (2) work which includes the erection of a building fronting⁹ on to a private street¹⁰; and (3) building work in relation to which a requirement¹¹ as to building over sewers is imposed¹². A person is not required to give a building notice or deposit full plans where he intends to carry out work consisting only of certain types of work¹³.

Where the statutory provision relating to local authority powers in relation to partly completed work¹⁴ applies, the owner must comply with the requirements of that provision instead of with the provisions described above¹⁵.

1 For the meaning of 'building work' see para 308 ante.

2 For the meaning of 'material change of use' see para 309 ante.

3 Ie in accordance with the Building Regulations 2000, SI 2000/2531, reg 13 (as amended): see para 324 post.

4 Ibid reg 12(2)(a). Regulation 12 (as amended) does not apply in respect of any work specified in an initial notice, an amendment notice or a public body's notice, which is in force: reg 20(1). As to an initial notice, an amendment notice and a public body's notice see para 354 et seq post. 'Building notice' means a notice given in accordance with reg 12(2)(a) and reg 13 (as amended) (see para 324 post): reg 2(1).

5 Ie in accordance with ibid reg 14 (as amended) (see para 325 post). 'Full plans' means plans deposited with a local authority for the purposes of the Building Act 1984 s 16 (as amended) (see para 329 post) in accordance with the Building Regulations 2000, SI 2000/2531, reg 12(2)(b) and reg 14 (see para 325 post): reg 2(1).

6 Ibid reg 12(2)(b).

7 For the meaning of 'building' see para 308 note 3 ante.

8 Building Regulations 2000, SI 2000/2531, reg 12(3). For these purposes, 'relevant use' means a use as a workplace of a kind to which the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, Pt II (regs 3-6) (as amended) (see FIRE SERVICES vol 18(2) (Reissue) paras 133-135) applies or a use designated under the Fire Precautions Act 1971 s 1 (as amended) (uses of premises for which fire certificate is compulsory) (see FIRE SERVICES vol 18(2) (Reissue) para 83): Building Regulations 2000, SI 2000/2531, reg 12(1).

9 For these purposes, 'fronting' includes adjoining, and 'front' is to be construed accordingly: Highways Act 1980 s 203(3); definition applied by the Building Regulations 2000, SI 2000/2531, reg 2(1).

10 Ibid reg 12(4). For these purposes, 'private street' has the same meaning as in the Highways Act 1980 s 203(2) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (Reissue) para 709): Building Regulations 2000, SI 2000/2531, reg 2(1).

11 Ie in relation to which ibid reg 4, Sch 1 Pt H para H4 (as substituted) imposes a requirement: see para 308 ante.

12 Ibid reg 12(4A) (added by SI 2001/3335).

13 Building Regulations 2000, SI 2000/2531, reg 12(5) (substituted by SI 2002/440). The work referred to in the text consists of:

- 9 (1) the installation of a heat-producing gas appliance, which is to be carried out by a person, or an employee of a person, who is a member of a class of persons approved in accordance with the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451, reg 3 (see FUEL AND ENERGY vol 19(2) (2007 Reissue) paras 913-914) (Building Regulations 2000, SI 2000/2531, Sch 2A Table (Sch 2A added by SI 2002/440));
- 10 (2) the installation of: (a) an oil-fired combustion appliance which has a rated heat output of 45 kilowatts or less and which is installed in a building with no more than three storeys, excluding any basement; or (b) oil storage tanks and the pipes connecting them to combustion appliances, which is to be carried out by an individual registered under the Oil Firing Registration Scheme by the Oil Firing Technical Association for the Petroleum Industry Ltd in respect of that type of work (Building Regulations 2000, SI 2000/2531, Sch 2A Table (as so added));
- 11 (3) the installation of a solid fuel burning combustion appliance which has a rated heat output of 50 kilowatts or less and which is installed in a building with no more than three storeys, excluding any basement, which is to be carried out by an individual registered under the Registration Scheme for Companies and Engineers involved in the Installation and Maintenance of Domestic Solid Fuel Fired Equipment by HETAS Ltd in respect of that type of work (Sch 2A Table (as so added));
- 12 (4) the installation of: (a) a service or fitting in relation to which Sch 1 Pt G (hygiene) (see para 308 ante) imposes a requirement; (b) a foul water or rainwater drainage system in relation to which Sch 1 Pt H paras H1, H3 (as substituted) (see para 308 ante) impose a requirement; or (c) a hot water vessel in relation to which Sch 1 Pt L paras L1, L2 (as substituted) (dwellings and buildings other than dwellings) impose a requirement, which is installed in or in connection with a building with no more than three storeys, excluding any basement, and which does not involve connection to a drainage system at a depth greater than 750 millimetres from the surface, which is to be carried out by an individual registered under the Approved Contractor Person Scheme (Building Regulations) by the Institute of Plumbing in respect of that type of work (Building Regulations 2000, SI 2000/2531, Sch 2A Table (as so added));
- 13 (5) the installation, as a replacement, of a window, rooflight, roof window or door in an existing building, which is to be carried out by a person registered under the Fenestration Self-Assessment Scheme by Fensa Ltd in respect of that type of work (Sch 2A Table (as so added)); or
- 14 (6) any building work which is necessary to ensure that any appliance, service or fitting which is installed and which is described in heads (1)-(5) supra, complies with the applicable requirements of Sch 1 (as amended) (see para 308 ante) (Sch 2A Table (as so added)).

For the purposes of Sch 2A (as added), 'appliance' includes any fittings or services, other than a hot water storage vessel which does not incorporate a vent pipe to the atmosphere, which form part of the space heating or hot water system served by the combustion appliance; and 'building work' does not include the provision of a masonry chimney: Sch 2A para 1 (as so added). Head (6) supra does not apply to building work which is necessary to ensure that a heat-producing gas appliance complies with the applicable requirements contained in Sch 1 (as amended) (see para 308 ante) unless the appliance has a net rated heat input of 70 kilowatts or less (Sch 2A para 2(a) (as so added)), and is installed in a building with no more than three storeys, excluding any basement (Sch 2A para 2(b) (as so added)).

14 Ie the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 20: see para 364 post.

15 Building Regulations 2000, SI 2000/2531, reg 12(6).

UPDATE

306-324 Power to make building regulations ... Particulars and plans where a building notice is given

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

323 Giving of a building notice or deposit of plans

TEXT AND NOTES--Where (1) a person proposes to carry out work which consists of emergency repairs; (2) it is not practicable to comply with SI 2000/2531 reg 12(2A) (see TEXT AND NOTES 1-6) before commencing the work; and (3) reg 12(5) does not apply, he must give a building notice to the local authority as soon as reasonably practicable after commencement of the work: reg 12(7) (added by SI 2006/652).

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTES 1-6--Replaced. SI 2000/2531 reg 12 applies to a person who intends to (1) carry out building work; (2) replace or renovate a thermal element in a building to which the energy efficiency requirements apply; (3) make a change to a building's energy status; or (4) make a material change of use: reg 12(2) (reg 12(2), (2A) substituted by SI 2006/652). For the meaning of 'renovate', 'thermal element', 'energy efficiency requirements' and 'change to a building's energy status' see PARA 308. A person to whom SI 2000/2531 reg 12 applies must give to the local authority a building notice in accordance with reg 13 (see PARA 324) or deposit full plans with the local authority in accordance with reg 14 (see PARA 325): reg 12(2A) (as so substituted).

TEXT AND NOTES 7-10--Now a person must deposit full plans (1) where he intends to carry out building work in relation to a building to which the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541 applies, or will apply after the completion of the building work; and (2) where he intends to carry out work which includes the erection of a building fronting on to a private street: SI 2000/2531 reg 12(3), (4) (substituted by SI 2006/652).

NOTE 8--SI 2000/2531 reg 12(1) revoked: SI 2005/1541. 1971 Act, SI 1997/1840 replaced: SI 2005/1541 (see TEXT AND NOTES 7-10).

NOTE 13--SI 2000/2531, reg 12(5) substituted: SI 2004/3210. The work referred to in the text now consists of:

(1) the installation of a heat-producing gas appliance by a person or an employee of a person, who is a member of a class of persons approved in accordance with the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451: SI 2000/2531 Sch 2A Table (substituted by SI 2006/652 and amended by SI 2006/3318, SI 2007/3384, SI 2008/671, SI 2009/466, SI 2009/2397);

(2) the installation of heating or a hot water system connected to a heat-producing gas appliance, or associated controls by a person registered by Capita Gas Registration and Ancillary Services Ltd or CORGI Services Ltd in respect of that type of work: SI 2000/2531 Sch 2A Table;

(3) the installation of an oil-fired combustion appliance which has a rated heat output of 100 kilowatts or less and which is installed in a building with no more than three storeys excluding any basement or in a dwelling, oil storage tanks and the pipes connecting them to combustion appliances or heating and hot water service systems connected to an oil-fired combustion appliance by an individual registered by Oil Firing Technical Association Ltd, NAPIT Registration Ltd or Building Engineering Services Competence Accreditation Ltd in respect of that type of work: Sch 2A Table;

(4) the installation of a solid fuel burning combustion appliance which has a rated heat output of 50 kilowatts or less which is installed in a building with no more than three storeys excluding any basement or heating and hot water systems connected to a solid fuel burning combustion appliance by a person registered by HETAS Ltd, NAPIT Registration Ltd, Association of Plumbing and Heating Contractors (Certification) Ltd, NICEIC Group Ltd or Building Engineering Services Competence Accreditation Ltd in respect of that type of work: Sch 2A Table;

(5) the installation of a heating or hot water system, or associated controls, in a dwelling, other than a combustion appliance or its associated controls by a person registered by Building Engineering Services Competence Accreditation Ltd, Association of Plumbing and Heating Contractors (Certification) Ltd, NICEIC Group Ltd, Corgi Services Ltd or NAPIT Registration Ltd in respect of that type of work: Sch 2A Table;

(6) the installation of a heating, hot water, mechanical ventilation or air conditioning system, or associated controls, in a building other than a dwelling, other than a combustion appliance or its associated controls by a person registered by Building Engineering Services Competence Accreditation Ltd or NICEIC Group Ltd in respect of that type of work: Sch 2A Table;

(7) the installation of an air conditioning or ventilation system in an existing dwelling, which does not involve work on systems shared with other dwellings by a person registered by CORGI Services Ltd or NAPIT Registration Ltd or NICEIC Group Ltd in respect of that type of work: Sch 2A Table;

(8) the installation of a commercial kitchen ventilation system which does not involve work on systems shared with parts of the building occupied separately by a person registered by CORGI Services Ltd or NICEIC Group Ltd in respect of that type of work: Sch 2A Table;

(9) the installation of a lighting system or electric heating system, or associated electrical controls by a person registered by EC Certification Ltd or NICEIC Group Ltd in respect of that type of work: Sch 2A Table;

(10) the installation of fixed low or extra-low voltage electrical installations by a person registered by BRD Certification Ltd, British Standards Institution, NICEIC Group Ltd or NAPIT Registration Ltd in respect of that type of work: Sch 2A Table;

(11) the installation of fixed low or extra-low voltage electrical installations as a necessary adjunct to or arising out of other work being carried out by the registered person by a person registered by CORGI Services Ltd, EC Certification Ltd, NAPIT Registration Ltd, Association of Plumbing and Heating Contractors (Certification) Ltd or NICEIC Group Ltd or Oil Firing Technical Association Ltd in respect of that type of electrical work: Sch 2A Table;

(12) the installation, as a replacement, of a window, roof light, roof window or door being a door which together with its frame has more than 50 per cent of its internal face area glazed, in an existing building by a person registered under the Fenestration Self-Assessment Scheme by Fensa Ltd, or by CERTASS Ltd or the British Standards Institution in respect of that type of work: Sch 2A Table;

(13) the installation of a sanitary convenience, sink, washbasin, bidet, fixed bath, shower or bathroom in a dwelling, which does not involve work on shared or underground drainage by a person registered by CORGI Services Ltd or NAPIT Registration Ltd, Association of Plumbing and Heating Contractors (Certification) Ltd or NICEIC Group Ltd in respect of that type of work: Sch 2A Table;

(14) the installation of a wholesome cold water supply by a person registered by Association of Plumbing and Heating Contractors (Certification) Ltd, Building

Engineering Services Competence Accreditation Ltd, CORGI Services Ltd, NAPIT Registration Ltd or NICEIC Group Ltd in respect of that type of work: Sch 2A Table (as so substituted and amended);

(15) the installation of a supply of non-wholesome water to a sanitary convenience fitted with a flushing device by a person registered by Association of Plumbing and Heating Contractors (Certification) Ltd, Building Engineering Services Competence Accreditation Ltd, CORGI Services Ltd, NAPIT Registration Ltd or NICEIC Group Ltd in respect of that type of work: Sch 2A Table;

(16) any building work, which is necessary to ensure that any appliance, service or fitting which is installed and which is described in heads (1)-(13), complies with the applicable requirements contained in Sch 1 (see PARA 308) by the person who installs the appliance, service or fitting to which the building work relates and who is described in the corresponding entry in heads (1)-(13); this head does not apply to (a) building work which is necessary to ensure that a heat-producing gas appliance complies with the applicable requirements contained in Sch 1 unless the appliance has a rated heat output of 100 kilowatts or less and is installed in a building with no more than three storeys excluding any basement or in a dwelling or (b) the provision of a masonry chimney: Sch 2A Table;

(17) the replacing of any fixed electrical equipment which does not include the provision of any new fixed cabling or a consumer unit or damaged cable for a single circuit only: Sch 2B (added by SI 2004/3210, amended by SI 2006/652, SI 2007/3384, SI 2009/1219);

(18) the re-fixing or replacing of enclosures of existing installation components where the circuit protective measures are unaffected: SI 2000/2531 Sch 2B;

(19) the provision of mechanical protection to an existing fixed installation where the circuit protective measures and current carrying capacity of conductors are unaffected by the increased thermal insulation: Sch 2B;

(20) the installation or upgrading of main or supplementary equipotential bonding: Sch 2B;

(21) in relation to an existing fixed building service, which is not a fixed internal or external lighting system the replacement of any part which is not a combustion appliance, the addition of an output device or the addition of a control device where testing and adjustment of the work is not possible or would not affect the use by the fixed building service of no more fuel and power than is reasonable in the circumstances: SI 2000/2531 Sch 2B;

(22) the provision of a self-contained fixed building service, which is not a fixed internal or external lighting system, where (a) it is not a combustion appliance; (b) any electrical work associated with its provision is exempt from the requirement to give a building notice or to deposit full plans by virtue of reg 9 or reg 12(5)(b); (c) testing and adjustment is not possible or would not affect its energy efficiency; and (d) in the case of a mechanical ventilation appliance, the appliance is not installed in a room containing an open-flued combustion appliance whose combustion products are discharged through a natural draught flue: Sch 2B;

(23) the replacement of an external door where the door together with its frame has not more than 50 per cent of its internal face area glazed: Sch 2B;

(24) in existing buildings other than dwellings, the provision of fixed internal lighting where no more than 100m² of the floor area of the building is to be served by the lighting: Sch 2B;

(25) the replacement of a sanitary convenience with one that uses no more water than the one that it replaces, a washbasin, sink or bidet, a fixed bath, a shower, a rainwater gutter, or a rainwater downpipe, where the work does not include any work to underground drainage, and includes no work to the hot or cold water system or above ground drainage which may prejudice the health or safety of any person on completion of the work: Sch 2B;

(26) in relation to an existing cold water supply, replacing any part, adding an output device, or adding a control device: Sch 2B;

(27) providing a hot water storage system that has a storage vessel with a capacity not exceeding 15 litres, where any electrical work associated with its provision is exempt from the requirement to give a building notice or to deposit full plans by virtue of reg 9 or reg 12(5)(b): Sch 2B;

(28) work which is not in a kitchen or a special location, does not involve work on a special installation, and consists of adding light fittings and switches to an existing circuit or adding socket outlets and fused spurs to an existing ring or radial circuit: Sch 2B;

(29) work on telephone wiring or extra-low voltage wiring for the purposes of communications, information technology, signalling, control and similar purposes, where the wiring is not in a special location, equipment associated with such wiring and pre-fabricated equipment sets and associated flexible leads with integral plug and socket connections: SI 2000/2531 Sch 2B;

For the meaning of 'electrical installation', 'extra-low voltage', 'low-voltage' see PARA 308 NOTE 13. For the purposes of Sch 2B, 'kitchen' means a room or part of a room which contains a sink and food preparation facilities, 'special installation' means an electric floor or ceiling heating system, an outdoor lighting or electric power installation, an electricity generator, or an extra-low voltage lighting system which is not a pre-assembled lighting set bearing the CE marking referred to in the Electrical Equipment (Safety) Regulations 1994, SI 1994/3260, reg 9, and 'special location' means a location within the limits of the relevant zones specified for a bath, a shower, a swimming or paddling pool or a hot air sauna in certain published regulations: SI 2000/2531 Sch 2B.

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324. Particulars and plans where a building notice is given.

A building notice¹ must state the name and address of the person intending to carry out the work² and must be signed by him or on his behalf, and must contain or be accompanied by a statement that it is given for the statutory purposes³, a description of the proposed building work⁴ or material change of use⁵, and particulars of the location of the building⁶ to which the proposal relates and the use or intended use of that building⁷. In the case of the erection or extension of a building, a building notice must be accompanied by:

- 126 (1) a plan⁸ showing:
 - 7 10. (a) the size and position of the building, or the building as extended, and its relationship to adjoining boundaries⁹;
 - 11. (b) the boundaries of the curtilage of the building, or the building as extended, and the size, position and use of every other building or proposed building within that curtilage¹⁰;
 - 12. (c) the width and position of any street on or within the boundaries of the curtilage of the building or the building as extended¹¹;
- 8 127 (2) a statement specifying the number of storeys, each basement level being counted as one storey, in the building to which the proposal relates¹²; and
- 128 (3) particulars of the provision to be made for the drainage of the building or extension¹³, and the steps to be taken to comply with any local enactment which applies¹⁴.

In the case of building work which involves the insertion of insulating material into the cavity walls of a building, a building notice must be accompanied by a statement which specifies¹⁵:

- 129 (i) the name and type of insulating material to be used¹⁶;
- 130 (ii) the name of any European Technical Approval issuing body¹⁷ which has approved the insulating material¹⁸;
- 131 (iii) the requirements relating to building work and material change of use¹⁹ in relation to which any body referred to in head (ii) above has approved the insulating material²⁰;
- 132 (iv) any national standard of a member state of the European Economic Area to which the insulating material conforms²¹; and
- 133 (v) the name of any body which has issued any current approval to the installer of the insulating material²².

Where building work involves the provision of a hot water storage system in relation to which a requirement is imposed²³ by building regulations, a building notice must be accompanied by a statement which specifies²⁴:

- 134 (A) the name, make, model and type of hot water storage system to be installed²⁵;

- 135 (b) the name of the body, if any, which has approved or certified that the system is capable of performing in a way which satisfies the requirements²⁶ as to hot water storage²⁷;
- 136 (c) the name of the body, if any, which has issued any current registered operative identity card to the installer or proposed installer of the system²⁸.

Where a building notice has been given, a person carrying out building work or making a material change of use must give the local authority, within such time as it specifies, such plans as are, in the particular case, necessary for the discharge of its functions in relation to building regulations and are specified by it in writing²⁹. A building notice ceases to have effect on the expiry of three years from the date on which that notice was given to the local authority, unless before the expiry of that period the building work to which the notice related was commenced³⁰, or the material change of use described in the notice was made³¹.

1 For the meaning of 'building notice' see para 323 note 4 ante.

2 The owner of a building who authorises a contractor to carry out building works on his behalf is a 'person carrying out building works' for the purposes of the building regulations; the meaning of that term is not restricted to the person who physically performs the work: *Blaenau Gwent Borough Council v Khan* (1993) 35 ConLR 65, DC.

3 Building Regulations 2000, SI 2000/2531, reg 13(1)(a). The statutory purposes are the purposes of reg 12(2)(a): see para 323 ante.

4 For the meaning of 'building work' see para 308 ante.

5 Building Regulations 2000, SI 2000/2531, reg 13(1)(b). For the meaning of 'material change of use' see para 309 ante.

6 For the meaning of 'building' see para 308 note 3 ante.

7 Building Regulations 2000, SI 2000/2531, reg 13(1)(c).

8 Ie a plan to a scale of not less than 1:1250: see *ibid* reg 13(2)(a).

9 *Ibid* reg 13(2)(a)(i).

10 *Ibid* reg 13(2)(a)(ii).

11 *Ibid* reg 13(2)(a)(iii).

12 *Ibid* reg 13(2)(b).

13 *Ibid* reg 13(2)(c)(i).

14 *Ibid* reg 13(2)(c)(iii).

15 *Ibid* reg 13(3).

16 *Ibid* reg 13(3)(a).

17 For these purposes, 'European Technical Approval issuing body' means a body authorised by a member state of the European Economic Area to issue European Technical Approvals (a favourable technical assessment of the fitness for use of a construction product for the purposes of EEC Council Directive 89/106 (OJ L40, 11.2.89, p 12) on the approximation of laws, regulations and administrative provisions of the member states relating to construction products: Building Regulations 2000, SI 2000/2531, reg 2(1).

18 *Ibid* reg 13(3)(b).

19 Ie the requirements of *ibid* Sch 1 (as amended): see para 308 ante.

20 *Ibid* reg 13(3)(c).

- 21 Ibid reg 13(3)(d).
- 22 Ibid reg 13(3)(e).
- 23 Ie by ibid Sch 1 Pt G para G3: see para 308 ante.
- 24 Ibid reg 13(4).
- 25 Ibid reg 13(4)(a).
- 26 Ie the requirements of ibid Sch 1 para G3: see para 308 ante.
- 27 Ibid reg 13(4)(b).
- 28 Ibid reg 13(4)(c).
- 29 Ibid reg 13(5). Neither a building notice nor plans which accompany it or are given under reg 13(5) are to be treated for the purposes of the Building Act 1984 s 16 (see para 329 post) as having been deposited in accordance with building regulations: Building Regulations 2000, SI 2000/2531, reg 13(6).
- 30 Ibid reg 13(7)(a).
- 31 Ibid reg 13(7)(b).

UPDATE

306-324 Power to make building regulations ... Particulars and plans where a building notice is given

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

324 Particulars and plans where a building notice is given

TEXT AND NOTES 4, 5--Now a description of the proposed building work, renovation or replacement of a thermal element, change to the building's energy status or material change of use: SI 2000/2531 reg 13(1)(b) (amended by SI 2006/652). For the meaning of 'renovation', 'thermal element' and 'change to the building's energy status'; see PARA 308.

TEXT AND NOTES 24-28--Omitted. SI 2000/2531 reg 13(4) revoked: SI 2009/1219.

TEXT AND NOTE 29--Reference to building work or making a material change of use is now to building work, renovation or replacement of a thermal element, change to the building's energy status or making a material change of use: SI 2000/2531 reg 13(5) (amended by SI 2006/652).

TEXT AND NOTE 31--Now refers to the change to the building's energy status or the material change of use described in the notice: SI 2000/2531 reg 13(7)(b) (amended by SI 2006/652).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(5) PLANS AND NOTICES/(i) Giving of Notices, Plans and Certificates/325. Full plans.

325. Full plans.

Full plans¹ must be accompanied by a statement that they are being deposited for statutory purposes². Full plans must be deposited in duplicate and the local authority may retain one copy³. Where a requirement as to fire safety is imposed⁴ in relation to proposed building work⁵, an additional two copies of any such plans as demonstrate compliance with that requirement must be deposited, both of which may be retained by the local authority⁶. Full plans must consist of:

- 137 (1) a description of the proposed building work or material change of use⁷, and the required⁸ plans, particulars and statements⁹;
- 138 (2) where requirements are imposed as to building over sewers¹⁰, particulars of the precautions to be taken in building over a drain, sewer or disposal main to comply with those requirements¹¹; and
- 139 (3) any other plans which are necessary to show that the work would comply with the Building Regulations 2000¹².

Full plans must be accompanied by a statement as to whether the building¹³ is put or is intended to be put to a use which is a relevant use¹⁴. Full plans may be accompanied by a request from the person carrying out building work that on completion of the work he wishes the local authority to issue¹⁵ a completion certificate¹⁶.

1 For the meaning of 'full plans' see para 323 note 5 ante.

2 Building Regulations 2000, SI 2000/2531, reg 14(1). The statement must indicate that the full plan is being deposited for the purpose of reg 12(2)(b): see para 323 ante.

3 Ibid reg 14(2)(a).

4 Ie by ibid reg 4, Sch 1 Pt B: see para 308 ante.

5 For the meaning of 'building work' see para 308 ante.

6 Building Regulations 2000, SI 2000/2531, reg 14(2)(b). Regulation 14(2)(b) may not require the deposit of additional copies of plans where the proposed building work relates to the erection, extension or material alteration of a dwelling-house or flat: reg 14(6). For the meaning of 'material alteration' see para 308 note 6 ante. For the meaning of 'dwelling-house' see para 308 note 24 ante. For the meaning of 'flat' see para 308 note 24 ante.

7 For the meaning of 'material change of use' see para 309 ante.

8 Ie required by the Building Regulations 2000, SI 2000/2531, reg 13(1)-(4): see para 324 ante.

9 Ibid reg 14(3)(a).

10 Ie by ibid Sch 1 Pt H para H4 (as substituted): see para 308 ante.

11 Ibid reg 14(3)(aa) (added by SI 2001/3335).

12 Building Regulations 2000, SI 2000/2531, reg 14(3)(b).

13 For the meaning of 'building' see para 308 note 3 ante.

14 Building Regulations 2000, SI 2000/2531, reg 14(4). For the meaning of 'relevant use' see para 323 note 8 ante.

15 ie in accordance with ibid reg 17: see para 327 post.

16 Ibid reg 14(5).

UPDATE

325 Full plans

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTES 7-9--Reference to proposed building work or material change of use now to proposed building work, renovation or replacement of a thermal element, change to the building's energy status or material change of use: SI 2000/2531 reg 14(3)(a) (amended by SI 2006/652). For the meaning of 'renovation', 'thermal element' and 'change to the building's energy status' see PARA 308.

TEXT AND NOTE 9--SI 2000/2531 reg 14(3)(a) further amended: SI 2009/1219.

TEXT AND NOTES 13, 14--SI 2000/2531 reg 14(4) substituted: SI 2005/1541.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(5) PLANS AND NOTICES/(i) Giving of Notices, Plans and Certificates/326. Notice of commencement and completion of certain stages of work.

326. Notice of commencement and completion of certain stages of work.

A person who proposes to carry out building work¹ must not commence that work unless he has given the local authority notice that he intends to commence work², and at least two days³ have elapsed since the end of the day on which he gave the notice⁴. A person carrying out building work⁵ must not cover up any excavation for a foundation, any foundation, any damp-proof course or any concrete or other material laid over a site⁶, or cover up in any way any drain or sewer to which the Building Regulations 2000⁷ apply, unless he has given the local authority notice that he intends to commence that work, and at least one day has elapsed since the end of the day on which he gave the notice⁸. A person who has laid, haunched or covered any drain or sewer in respect of which a requirement has been imposed⁹ in relation to drainage and waste disposal must give notice to that effect to the local authority not more than five days after the completion of the work¹⁰. Where a person fails to comply with these requirements¹¹, he must comply within a reasonable time with any notice given by the local authority requiring him to cut into, lay open or pull down so much of the work as prevents it from ascertaining whether the Building Regulations 2000 have been complied with¹².

A person carrying out building work must, not more than five days after that work has been completed, give the local authority notice to that effect¹³. Where a building¹⁴ is being erected, and that building, or any part of it, is to be occupied before completion, the person carrying out that work must give the local authority at least five days' notice before the building or any part of it is occupied¹⁵.

If the local authority has given notice specifying the manner in which any work contravenes the requirements in the Building Regulations 2000, a person who has carried out any further work to secure compliance with the regulations must within a reasonable time after the completion of such further work give notice to the local authority of its completion¹⁶.

1 For the meaning of 'building work' see para 308 ante.

2 Building Regulations 2000, SI 2000/2531, reg 15(1)(a) (amended by SI 2002/440). The Building Regulations 2000, SI 2000/2531, reg 15 (as amended) does not apply in respect of any work specified in an initial notice, an amendment notice or a public body's notice, which is in force: reg 20(1). As to an initial notice, an amendment notice and a public body's notice see para 354 et seq post. The provisions of reg 15(1)-(4) (as amended) apply only to a person who is required by reg 12 (as amended) (see para 323 ante) to give a building notice or deposit full plans: reg 15(8) (added by SI 2002/440). For the meaning of 'building notice' see para 323 note 4 ante. For the meaning of 'full plans' see para 323 note 5 ante.

3 For the meaning of 'day' see para 313 note 15 ante.

4 Building Regulations 2000, SI 2000/2531, reg 15(1)(b) (amended by SI 2002/440). See note 2 supra.

5 The owner of a building who authorises a contractor to carry out building works on his behalf is a 'person carrying out building works' for the purposes of the building regulations; the meaning of that term is not restricted to the person who physically performs the work: *Blaenau Gwent Borough Council v Khan* (1993) 35 ConLR 65, DC.

6 Building Regulations 2000, SI 2000/2531, reg 15(2)(a) (amended by SI 2002/440). See note 2 supra.

7 Ie the Building Regulations 2000, SI 2000/2531 (as amended).

8 Ibid reg 15(2)(b) (amended by SI 2002/440). See note 2 supra.

9 le in respect of which the Building Regulations 2000, SI 2000/2531, reg 4, Sch 1 Pt H (as substituted) imposes a requirement: see para 308 ante.

10 Ibid reg 15(3) (amended by SI 2002/440). See note 2 supra.

11 le the Building Regulations 2000, SI 2000/2531, reg 15(1)-(3) (as amended): see the text and notes 1-10 supra.

12 Ibid reg 15(6).

13 Ibid reg 15(4) (amended by SI 2002/440). See note 2 supra.

14 For the meaning of 'building' see para 308 note 3 ante.

15 Building Regulations 2000, SI 2000/2531 reg 15(5).

16 Ibid reg 15(7).

UPDATE

326 Notice of commencement and completion of certain stages of work

TEXT AND NOTES 1-4--SI 2000/2531 reg 15(1) does not apply where reg 12(7) (see PARA 323) applies: reg 15(1), (9) (reg 15(1) amended, reg 15(9) added by SI 2006/652).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(5) PLANS AND NOTICES/(i) Giving of Notices, Plans and Certificates/327. Completion certificates.

327. Completion certificates.

A local authority must give a completion certificate where:

- 140 (1) it receives a notice¹ that building work² has been completed, or, that a building³ has been partly occupied before completion⁴; and
- 141 (2) it has either been notified⁵ that the building is put or is intended to be put to a use which is a relevant use⁶, or been requested⁷ to give a completion certificate⁸.

Where in relation to any building work or, as the case may be, to any part of a building which has been occupied before completion, a local authority has been able to ascertain, after taking all reasonable steps, that the relevant requirements⁹ specified in the certificate have been satisfied, it must give a certificate to that effect¹⁰. A completion certificate¹¹ is evidence, but not conclusive evidence, that the requirements specified in the certificate have been complied with¹².

1 Ie under the Building Regulations 2000, SI 2000/2531, reg 15(4) (as amended) or reg 15(5): see para 326 ante.

2 For the meaning of 'building work' see para 308 ante.

3 For the meaning of 'building' see para 308 note 3 ante.

4 Building Regulations 2000, SI 2000/2531, reg 17(1)(a). Regulation 17 is designated as a provision to which the Building Act 1984 s 35 (see para 343 post) (penalty for contravening building regulations) does not apply: Building Regulations 2000, SI 2000/2531, reg 22. Regulation 17 (as amended) does not apply in respect of any work specified in an initial notice, an amendment notice or a public body's notice, which is in force: reg 20(1). As to an initial notice, an amendment notice and a public body's notice see para 354 et seq post.

5 Ie in accordance with *ibid* reg 14(4): see para 325 ante.

6 *Ibid* reg 17(1)(b)(i). For the meaning of 'relevant use' see para 323 note 8 ante; definition applied by reg 17(1)(b)(i).

7 Ie in accordance with *ibid* reg 14(5): see para 325 ante.

8 *Ibid* reg 17(1)(b)(ii).

9 Ie the relevant requirements of *ibid* reg 4, Sch 1 (as amended) (see para 308 ante). For these purposes, 'the relevant requirements' mean in a case mentioned in reg 17(1)(b)(i) (see the text to notes 5-6 supra), the applicable requirements of Sch 1 Pt B (see para 308 ante) (fire safety), and in a case mentioned in reg 17(1)(b)(ii) (see the text to notes 7-8 supra), any applicable requirements of Sch 1 (as amended) (see para 308 ante): reg 17(3).

10 *Ibid* reg 17(2).

11 Ie given in accordance with *ibid* reg 17.

12 *Ibid* reg 17(4).

UPDATE

327 Completion certificates

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTES 5, 6--SI 2000/2531 reg 17(1)(b)(i) substituted: SI 2005/1541.

NOTES 9, 10--Relevant requirements are now those of SI 2000/2531 reg 16B (see PARA 328B) in a case mentioned in reg 17(1)(b)(i), and those of reg 17C (see PARA 328A.1) in a case mentioned in reg 17(1)(b)(ii): reg 17(2), (3) (amended by SI 2006/3318).

NOTE 9--SI 2000/2531 reg 17(3) amended: SI 2009/1219.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(5) PLANS AND NOTICES/(i) Giving of Notices, Plans and Certificates/328. Energy rating.

328. Energy rating.

Where a new dwelling¹ is created by building work² or by a material change of use³ in connection with which building work is carried out⁴, the person carrying out the building work⁵ must calculate the energy rating⁶ of the dwelling by means of a procedure approved by the Secretary of State, and must give notice of that rating to the local authority⁷. The notice must be given not later than the date on which the notice required where building work has been completed⁸ is given, and, where a new dwelling is created by the erection of a building⁹, it must be given at least five days¹⁰ before occupation of the dwelling¹¹.

The person carrying out the building work must affix, as soon as practicable, in a conspicuous place in the dwelling, a notice stating the energy rating of the dwelling¹². The notice must be affixed not later than the date on which the notice required where building work has been completed¹³ is given, and, where a new dwelling is created by the erection of a building, it must be affixed not later than five days before occupation of the dwelling¹⁴. If, on the date the dwelling is first occupied as a residence, no notice has been affixed in the dwelling¹⁵, the person carrying out the building work must, not later than the date on which the notice required where building work has been completed¹⁶ is given, give to the occupier of the dwelling a notice stating the energy rating of the dwelling¹⁷.

1 For the meaning of 'dwelling' see para 308 note 24 ante.

2 For the meaning of 'building work' see para 308 ante.

3 For the meaning of 'material change of use' see para 309 ante.

4 Building Regulations 2000, SI 2000/2531, reg 16(1). Regulation 16 (as amended) does not apply in respect of any work specified in an initial notice, an amendment notice or a public body's notice, which is in force: reg 20(1). As to an initial notice, an amendment notice and a public body's notice see para 354 et seq post.

5 The owner of a building who authorises a contractor to carry out building works on his behalf is a 'person carrying out building works' for the purposes of the building regulations; the meaning of that term is not restricted to the person who physically performs the work: *Blaenau Gwent Borough Council v Khan* (1993) 35 ConLR 65, DC.

6 For these purposes, 'energy rating' of a dwelling means a numerical indication of the overall energy efficiency of that dwelling obtained by the application of a procedure approved by the Secretary of State under the Building Regulations 2000, SI 2000/2531, reg 16(2); reg 2(1). As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

7 Ibid reg 16(2). Where the building work in question is the subject of an initial notice, notice of the energy rating must be given to the approved inspector: see para 369 post.

8 Ie under ibid reg 15(4): see para 326 ante.

9 For the meaning of 'building' see para 308 note 3 ante.

10 For the meaning of 'day' see para 313 note 15 ante.

11 Building Regulations 2000, SI 2000/2531, reg 16(3).

12 Ibid reg 16(4). Regulation 16(4) does not apply in a case where the person carrying out the work intends to occupy, or occupies, the dwelling as a residence: reg 16(7).

13 See note 8 supra.

14 Building Regulations 2000, SI 2000/2531, reg 16(5).

15 Ie in accordance with ibid reg 16(4): see the text to note 12 supra.

16 See note 8 supra.

17 Building Regulations 2000, SI 2000/2531, reg 16(6). The text refers to the energy rating of the building calculated in accordance with reg 16(2): see the text and notes 5-7 supra. Regulation 16(6) does not apply in a case where the person carrying out the work intends to occupy, or occupies, the dwelling as a residence: reg 16(7).

UPDATE

328 Energy rating

TEXT AND NOTES--As to the energy performance of buildings see PARA 328A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(5) PLANS AND NOTICES/(i) Giving of Notices, Plans and Certificates/328A. Energy performance of buildings.

328A. Energy performance of buildings.

1. Energy performance of buildings generally

The Secretary of State must approve: (1) a methodology of calculation of the energy performance of buildings¹, including methods for calculating asset ratings² and operational ratings³ of buildings; and (2) ways in which the energy performance of buildings, as calculated in accordance with the methodology, are to be expressed⁴. He must approve minimum energy performance requirements for new buildings, in the form of target CO₂ emission rates, which must be based on the methodology approved pursuant to heads (1) and (2) above⁵; and where a building is erected, it must not exceed the target CO₂ emission rate for the building that has been so approved⁶.

Where proposed building work⁷ to an existing building with a total useful floor area⁸ over 1,000 square metres consists of or includes an extension, the initial provision of any fixed building services⁹ or an increase to the installed capacity of any fixed building services, then such work, if any, must be carried out as is necessary to ensure that the building complies with the prescribed requirements¹⁰ as to energy efficiency¹¹; but this does not require work to be carried out if it is not technically, functionally and economically feasible¹².

Where: (a) a building is erected; or (b) a building is modified so that it has a greater or fewer number of parts designed or altered for separate use than it previously had, where the modification includes the provision or extension of any of the fixed services for heating, hot water, air conditioning or mechanical ventilation, the person carrying out the work must give an energy performance certificate for the building to the owner of the building and must give to the local authority notice to that effect, including the reference number under which the energy performance certificate has been registered¹³. The energy performance certificate must be accompanied by a recommendation report containing recommendations for the improvement of the energy performance of the building, issued by the energy assessor¹⁴ who issued the energy performance certificate¹⁵. An energy performance certificate must: (i) express the asset rating of the building in a way approved by the Secretary of State under heads (1) and (2) above; (ii) include a reference value such as a current legal standard or benchmark; (iii) be issued by an energy assessor who is accredited to produce energy performance certificates for that category of building; and (iv) include the following information: (A) the reference number under which the certificate has been registered¹⁶; (B) the address of the building; (C) an estimate of the total useful floor area of the building; (D) the name of the energy assessor who issued it; (E) the name and address of the energy assessor's employer, or, if he is self-employed, the name under which he trades and his address; (F) the date on which it was issued; and (G) the name of the approved accreditation scheme of which the energy assessor is a member¹⁷.

Certification for apartments or units designed or altered for separate use in blocks may be based either on a common certification of the whole building for blocks with a common heating system (except in the case of a dwelling) or on the assessment of another representative apartment or unit in the same block¹⁸. Where a block with a common heating system is divided into parts designed or altered for separate use, and one or more, but not all, of the parts are dwellings, certification for those parts which are not dwellings may be based on a common certification of all the parts which are not dwellings¹⁹.

An energy assessor must include in an energy performance certificate a declaration of any personal or business relationship, other than in relation to producing the certificate, that he has with the person who commissioned the certificate and with any person who he believes either has or may have a personal or business relationship with the person who commissioned the certificate, or has or may have an interest in the building²⁰. Energy assessors must carry out energy assessments with reasonable care and skill²¹; and the duty so imposed is enforceable by the owner and by any prospective or actual buyer or tenant of the building during the period of validity of the certificate²². Any cause of action arising in relation to the duty so imposed is deemed not to be an action founded on tort for the purposes of the Limitation Act 1980²³.

1 For these purposes, 'building' means the building as a whole or parts of it that have been designed or altered to be used separately: Building Regulations 2000, SI 2000/2531, reg 17J(1) (reg 17E added by SI 2006/552; and substituted by SI 2007/991; SI 2000/2531 regs 17F-17J added by SI 2007/991). 'Building' means any permanent or temporary building but not any other kind of structure or erection, and a reference to a building includes a reference to part of a building: SI 2000/2531 reg 2(1). 'Dwelling' includes a dwelling house and a flat; 'dwelling house' does not include a flat or a building containing a flat; and 'flat' means separate and self-contained premises constructed or adapted for use for residential purposes and forming part of a building from some other part of which it is divided horizontally: SI 2000/2531 reg 2(1).

The requirement for member states to take measures to promote the improvement of the energy performance of buildings is set out in European Parliament and EC Council Directive 2002/91.

2 'Asset rating' means a numerical indicator of the amount of energy estimated to meet the different needs associated with a standardised use of the building: SI 2000/2531 reg 17A(2) (regs 17A-17D added by SI 2006/652; SI 2000/2531 reg 17A substituted by SI 2007/991).

3 'Operational rating' means a numerical indicator of the amount of energy consumed during the occupation of a building over a period of time: SI 2000/2531 reg 17A(2).

4 SI 2000/2531 reg 17A(1).

5 SI 2000/2531 reg 17B.

6 SI 2000/2531 reg 17C. Subject to reg 20D(4), where reg 17C applies, the person carrying out the work must give the local authority a notice which specifies (1) the target CO₂ emission rate for the building; and (2) the calculated CO₂ emission rate for the building as constructed: SI 2000/2531 reg 20D(1) (reg 20D added by SI 2006/652). The notice must be given to the local authority not later than five days after the work has been completed: reg 20D(2) (amended by SI 2008/2363). A local authority is authorised to accept, as evidence that the requirements of SI 2000/2531 reg 17C would be satisfied if the building were constructed in accordance with an accompanying list of specifications, a certificate to that effect by an energy assessor as defined in reg 17J who is accredited to produce such certificates for that category of building: reg 20D(3) (substituted by SI 2008/2363). Where such a certificate is given to the local authority, SI 2000/2531 reg 20D(1) does not apply, and the person carrying out the work must provide to the local authority not later than five days after the work has been completed a notice which (a) states whether the building has been constructed in accordance with the list of specifications which accompanied the certificate; and (b) if it has not, lists any changes to the specifications to which the building has been constructed: reg 20D(4) (amended by SI 2008/2363). As to the application of SI 2000/2531 reg 17C to educational buildings and buildings of statutory undertakers see the Building and Approved Inspectors (Amendment) Regulations 2006, SI 2006/652, reg 28.

7 For the meaning of 'building work' see PARA 308.

8 'Floor area' means the aggregate area of every floor in a building or extension, calculated by reference to the finished internal faces of the walls enclosing the area, or if at any point there is no such wall, by reference to the outermost edge of the floor: SI 2000/2531 reg 2(1).

9 For the meaning of 'fixed building services' see PARA 308.

10 I.e the requirements of SI 2000/2531 Sch 1 Pt L: see PARA 308.

11 SI 2000/2531 reg 17D(1), (2).

12 SI 2000/2531 reg 17D(3). As to the application of reg 17D to educational buildings and buildings of statutory undertakers see SI 2006/652 reg 28.

13 le in accordance with SI 2000/2531 reg 17F(4): SI 2000/2531 reg 17E(1), (2) (amended by SI 2008/2363). The energy performance certificate and notice must be given not later than five days after the work has been completed: reg 17E(3) (substituted by SI 2008/2363).

14 For these purposes 'energy assessor' means an individual who is a member of an accreditation scheme approved by the Secretary of State in accordance with SI 2000/2531 reg 17F: SI 2000/2531 reg 17J(1). An energy assessor must be a member of an accreditation scheme approved by the Secretary of State: reg 17F(1) (reg 17F as added: see NOTE 1). The terms of approval of any accreditation scheme may be limited in relation to the categories of building for which members may produce certificates: reg 17F(2). Before approving an accreditation scheme the Secretary of State must be satisfied that the scheme contains adequate provision: (1) for ensuring that members of the scheme carry out consistent and accurate energy assessments in an independent manner; (2) for ensuring that members of the scheme are fit and proper persons who are qualified (by their education, training and experience) to carry out energy assessments; (3) for requiring members of the scheme to prepare energy performance certificates and recommendation reports using a standard form for each type of document; (4) for ensuring the production and publication of a code as regards the conduct required of its members; (5) for indemnity arrangements in relation to owners and prospective or actual buyers or tenants; (6) for facilitating the resolution of complaints against members of the scheme; (7) for requiring energy performance certificates and recommendation reports produced by members of the scheme to be entered on the relevant register referred to in reg 17F(4); and (8) for the keeping of a register of the members of the scheme: reg 17F(3). Where an energy assessor issues an energy performance certificate and recommendation report he must ensure they are entered onto the relevant register maintained by the Secretary of State in accordance with the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, SI 2007/991, reg 31 (see PARA 328A.2) before he gives them to the person who requested that he issue them: SI 2000/2531 reg 17F(4). For these purposes, a reference to 'energy assessment' includes a reference to (a) the preparation and issuing of energy performance certificates; (b) the preparation and issuing of recommendation reports; and (c) the carrying out of any inspections undertaken for the purposes of preparing energy performance certificates or recommendation reports (reg 17J(2)); and 'recommendation report' means the report required by reg 17E(4) (reg 17J(1)).

Any person may, for the purpose of complying with any duty imposed by SI 2000/2531 or SI 2007/991 (see PARA 328A.2), copy or issue a copy of any document produced by an energy assessor: SI 2000/2531 reg 17I.

15 SI 2000/2531 reg 17E(4).

16 le in accordance with SI 2000/2531 reg 17F(4).

17 SI 2000/2531 reg 17E(5).

18 SI 2000/2531 reg 17E(6).

19 SI 2000/2531 reg 17E(7).

20 SI 2000/2531 reg 17G.

21 SI 2000/2531 reg 17H(1).

22 SI 2000/2531 reg 17H(2).

23 SI 2000/2531 reg 17H(3). See LIMITATION PERIODS vol 68 (2008) PARA 979.

2. Energy performance of buildings; certificates and inspections

Where a building¹ is to be sold or rented out, the relevant person² must make available free of charge a valid energy performance certificate³ to any prospective buyer or tenant⁴ at the earliest opportunity and in any event before entering into a contract to sell or rent out the building or, if sooner, no later than whichever is the earlier of: (1) in the case of a person who requests information about the building, the time at which the relevant person first makes available any information in writing about the building to the person; or (2) in the case of a person who makes a request to view the building, the time at which the person views the building⁵. This does not, however, apply if the relevant person believes on reasonable grounds that the prospective buyer or tenant: (a) is unlikely to have sufficient means to buy or rent the building; (b) is not genuinely interested in buying or renting a building of a general description which applies to the building; or (c) is not a person to whom the relevant person is likely to be prepared to sell or rent out the building⁶. The relevant person must ensure that a valid energy

performance certificate has been given free of charge to the person who ultimately becomes the buyer or tenant⁷.

Where a residential property⁸ is to be sold and no valid energy performance certificate is available for that property, before the property is put on the market⁹, the seller must secure that an energy performance certificate is commissioned¹⁰ for the property¹¹. Before marketing the property, a person acting on behalf of the seller must be satisfied that an energy performance certificate has been commissioned for the property¹². The seller and a person acting on behalf of the seller must use all reasonable efforts to secure that a valid energy performance certificate is obtained for the property before the end of a period of 28 days starting with the day on which the property was first put on the market¹³.

An energy performance certificate must be given or made available to a prospective buyer or tenant at any time before the construction of the building has been completed¹⁴.

Where a residential property is to be sold, then if written particulars¹⁵ about the building are prepared for the purpose of providing information about the building to persons who may be interested in buying the building and the written particulars are given to such a person by the relevant person, or by another person on his behalf, once a valid energy performance certificate has been obtained, the person giving the particulars must ensure either that the particulars include the asset rating of the building expressed in the required way¹⁶ or that a copy of an energy performance certificate for the building is attached to the particulars¹⁷.

The above provisions do not apply in prescribed circumstances where the building is suitable for demolition and redevelopment¹⁸.

Subject to certain exceptions¹⁹, when a building to which building regulations²⁰ do not apply is constructed, the relevant person must, no later than five days after the construction work has been completed, give to the owner of the building an energy performance certificate for the building²¹.

Where a relevant person is under a duty²² to make available or give an energy performance certificate to any person, the certificate must be accompanied by a recommendation report, that is, a report containing recommendations for the improvement of the energy performance of the building issued by the energy assessor who issued the energy performance certificate²³. It is sufficient to give or make available a copy of a valid energy performance certificate²⁴ and if the recipient consents, this may be done electronically²⁵. Information from an energy performance certificate, a recommendation report, or a copy of either of them, may only be disclosed in prescribed circumstances²⁶.

Provision is also made with regard to display energy certificates²⁷ for buildings with a total useful floor area over 1,000 square metres occupied by public authorities and by institutions providing public services to a large number of persons and which are frequented by such persons²⁸ and with regard to the inspection of air-conditioning systems²⁹.

The Secretary of State must maintain one or more registers of the following documents: (i) energy performance certificates and recommendation reports; (ii) display energy certificates; and (iii) advisory reports³⁰. An energy assessor who issues any such documents must ensure that the document, and the data which was used to calculate any asset rating or operational rating, and to produce the document, is entered onto the relevant register before the assessor gives the document to the person who requested that it be issued³¹. Each document entered onto the register must be registered under a unique reference number and must not be altered once registered³². Any document or data entered onto the register must be kept on the register for a period of at least 20 years beginning on the date on which it is entered onto the register³³. Any document or data so entered may only be disclosed by the keeper of the register if he is authorised³⁴ to do so³⁵.

Where the relevant regulations³⁶ impose a duty on a person to make available, give or display an energy performance certificate or a display energy certificate in relation to a building, or to

ensure an air-conditioning system is inspected, it is the duty of every person with an interest in, or in occupation of, the building to allow such access to any energy assessor appointed by the above-mentioned person ('the responsible person') as is reasonably necessary to inspect the building for the purposes of: (A) preparing an energy performance certificate and recommendation report; (B) preparing a display energy certificate or advisory report; or (C) inspecting an air-conditioning system; and to co-operate with the responsible person so far as is reasonably necessary to enable him to comply with that duty³⁷.

Every local weights and measures authority is an enforcement authority and is charged with the duty of enforcing specified provisions within its area³⁸. An authorised officer of an enforcement authority may require the production of a valid energy performance certificate and recommendation report, an advisory report and an inspection report³⁹. If such an authorised officer believes that a person has committed a breach of any duty under any of the specified provisions, he may give a penalty charge notice to that person⁴⁰. The recipient of a penalty charge notice may require the enforcement authority to review the notice⁴¹ and, if the enforcement authority confirms the notice, may appeal to the county court⁴². Obstruction of an enforcement authority and imitation of an authorised officer of an enforcement authority is an offence⁴³.

1 'Building' means a roofed construction having walls, for which energy is used to condition the indoor climate, and a reference to a building includes a reference to a part of a building which has been designed or altered to be used separately: Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, SI 2007/991, reg 2(1). Subject to reg 4, and notwithstanding the Building Act 1984 s 4, SI 2007/991, other than reg 8, applies to all buildings including buildings which are exempt from building regulations by virtue of that provision: SI 2007/991 reg 1(2). As to the application of SI 2007/991 to the Crown see reg 49. Regulations 5-14 do not, however, apply to (1) buildings which are used primarily or solely as places of worship; (2) temporary buildings with a planned time of use of two years or less, industrial sites, workshops and non-residential agricultural buildings with low energy demand; (3) stand-alone buildings with a total useful floor area of less than 50m² which are not dwellings: SI 2007/991 reg 4(1). 'Dwelling' means a building or part of a building occupied or intended to be occupied as a separate dwelling: reg 2(1).

The requirement for member states to take measures to promote the improvement of the energy performance of buildings is set out in European Parliament and EC Council Directive 2002/91. Unless otherwise defined in SI 2007/991, terms used in SI 2007/991 have the same meaning as in European Parliament and EC Council Directive 2002/91: SI 2007/991 reg 2(2).

2 'Relevant person' means (1) in relation to a building which is to be sold, the seller; (2) in relation to a building which is to be rented out, the prospective landlord; (3) in relation to a building in circumstances where SI 2007/991 reg 9 (construction of Crown and statutory undertakers' buildings: see the TEXT AND NOTES 19-21) applies, the person responsible for carrying out the construction work; and (4) in relation to an air-conditioning system, the person who has control of the operation of the system: reg 2(1). 'Air-conditioning system' means a combination of all the components required to provide a form of air treatment in which the temperature is controlled or can be lowered, and includes systems which combine such air treatment with the control of ventilation, humidity and air cleanliness: reg 2(1).

3 'Energy performance certificate' means a certificate which complies with SI 2007/991 reg 11(1) or with the Building Regulations 2000, SI 2000/2531, reg 17E (see PARA 328A.1): SI 2007/991 reg 2(1). An energy performance certificate must (1) express the asset rating of the building in a way approved by the Secretary of State under SI 2000/2531 reg 17A (see PARA 328A.1); (2) include a reference value such as a current legal standard or benchmark; (3) be issued by an energy assessor who is accredited to produce energy performance certificates for that category of building; and (4) include the following information: (a) the reference number under which the certificate has been registered in accordance with SI 2007/991 reg 31; (b) the address of the building; (c) an estimate of the total useful floor area of the building; (d) the name of the energy assessor who issued it; (e) the name and address of the energy assessor's employer, or, if he is self-employed, the name under which he trades and his address; (f) the date on which it was issued; and (g) the name of the approved accreditation scheme of which the energy assessor is a member: SI 2007/991 reg 11(1). A certificate which complies with SI 2000/2531 reg 17E is also an energy performance certificate: SI 2007/991 reg 11(2). An energy performance certificate is only valid for the purposes of Pt 2 (regs 4-14) if it was issued no more than ten years before the date on which it is made available and no other energy performance certificate for the building has since been obtained by or provided to the relevant person: reg 11(3) (amended by SI 2010/1456). An energy performance certificate must not contain any information or data, except for the address of the building, from which a living individual (other than the energy assessor or his employer) can be identified: SI 2007/991 reg 11(6) (amended by SI 2007/1669). Certification for apartments or units designed or altered for separate use in blocks may be based (i) except in the case of a dwelling, on a common certification of the whole building for

blocks with a common heating system; or (ii) on the assessment of another representative apartment or unit in the same block: SI 2007/991 reg 11(7). Where a block with a common heating system is divided into parts designed or altered for separate use and one or more, but not all, of the parts are dwellings, certification for those parts which are not dwellings may be based on a common certification of all the parts which are not dwellings: reg 11(8). 'Asset rating' means a numerical indicator of the amount of energy estimated to meet the different needs associated with a standardised use of a building, calculated according to the methodology approved by the Secretary of State pursuant to SI 2000/2531 reg 17A (see PARA 328A.1): SI 2007/991 reg 2(1).

For these purposes, 'energy assessor' means an individual who is a member of an accreditation scheme; and 'accreditation scheme' means a scheme approved by the Secretary of State in accordance with either reg 25, or with SI 2000/2531 reg 17F (see PARA 328A.1): SI 2007/991 reg 2(1). As to accreditation schemes see reg 25; as an energy assessor's duty to disclose certain connections see reg 26; and as to the duty of care owed by energy assessors see reg 27. Any person may, for the purpose of complying with any duty imposed by SI 2007/991, copy or issue a copy of any document produced by an energy assessor: SI 2007/991 reg 28.

4 A person becomes a prospective buyer or tenant in relation to a building when he (1) requests any information about the building from the relevant person or his agent for the purpose of deciding whether to buy or rent the building; (2) makes a request to view the building for the purpose of deciding whether to buy or rent the building; or (3) makes an offer, whether oral or written, to buy or rent the building: SI 2007/991 reg 3.

5 SI 2007/991 reg 5(1), (2).

6 SI 2007/991 reg 5(3). Nothing in reg 5(3) authorises the doing of anything which constitutes an unlawful act of discrimination: reg 5(4).

7 SI 2007/991 reg 5(5).

8 'Residential property' means premises in England and Wales consisting of a single dwelling, including ancillary land: SI 2007/991 reg 2(1) (definition added by SI 2010/1456).

9 'The market' means the residential property market in England and Wales: SI 2007/991 reg 5A(5)(a) (reg 5A added by SI 2010/1456). A residential property is put on the market when the fact that it is or may become available for sale is, with the intention of marketing the property, first made public in England and Wales by or on behalf of the seller: reg 5A(5)(b). A fact is made public when it is advertised or otherwise communicated, in whatever form and by whatever means, to the public or to a section of the public: reg 5A(5)(c).

10 An energy performance certificate is commissioned when a request is made (1) which is properly addressed to an energy assessor who is accredited to produce energy performance certificates for the category of building in question; and (2) which is in such form, contains all such information and is accompanied by such payment or undertaking to make such payment as is usually necessary to obtain a certificate: reg 5A(5)(d).

11 SI 2007/991 reg 5A(1), (2).

12 SI 2007/991 reg 5A(3).

13 SI 2007/991 reg 5A(4).

14 SI 2007/991 reg 4(2).

15 For these purposes, 'written particulars' means any written description of the property which includes at least two of the following: (1) a photograph of the building or any room in the building; (2) a floor plan of the building; or (3) a description of the size of the rooms in the building; and a reference to giving particulars includes a reference to giving or making available particulars electronically: SI 2007/991 reg 6(3).

16 Ie the way required by SI 2007/991 reg 11(1)(a).

17 SI 2007/991 reg 6(1), (2) (amended by SI 2010/1456).

18 See SI 2007/991 reg 7 (amended by SI 2010/1456).

19 SI 2007/991 reg 9(2) does not apply to (1) buildings which are exempt from building regulations by virtue of SI 2000/2531 reg 9 (exempt building and work: see PARA 313); (2) buildings which are used primarily or solely as places of worship; (3) temporary buildings with a planned time of use of two years or less, industrial sites, workshops and non-residential agricultural buildings with low energy demand; and (4) stand-alone buildings with a total useful floor area of less than 50m² which are not dwellings: SI 2007/991 reg 9(1).

20 Ie Building Regulations 2000, SI 2000/2531.

21 SI 2007/991 reg 9(1), (2).

22 le under SI 2007/991 reg 5(2), 5(5) or 9(2).

23 SI 2007/991 reg 10(1), (2). A recommendation report includes a report issued by an energy assessor for the purposes of SI 2000/2531 reg 17E(4) (see PARA 328A.1) or the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 12(4) (see PARA 369): SI 2007/991 reg 2(1).

24 See SI 2007/991 reg 12.

25 See SI 2007/991 reg 13.

26 See SI 2007/991 reg 14 (amended by SI 2008/647, SI 2008/2363, SI 2009/1900, SI 2010/1456).

27 'Display energy certificate' means a certificate which complies with SI 2007/991 reg 17: reg 2(1). A display energy certificate must (1) subject to reg 18, express the operational rating and the asset rating of the building in ways approved by the Secretary of State under SI 2000/2531 reg 17A; (2) show the operational ratings for the building which were expressed in any certificates displayed by the occupier during the two years before the nominated date; (3) include a reference value such as a current legal standard or benchmark; (4) be issued by an energy assessor who is accredited to produce display energy certificates for that category of building; (5) include the following information: (a) the reference number under which the certificate has been registered in accordance with SI 2007/991 reg 31; (b) the address of the building; (c) the total useful floor area of the building; (d) the name of the energy assessor who issued it; (e) the name and address of the energy assessor's employer, or, if he is self-employed, the name under which he trades and his address; (f) the date on which it was issued; (g) the nominated date; and (h) the name of the approved accreditation scheme of which the energy assessor is a member: reg 17 (amended by SI 2008/2363). There are prescribed exemptions with regard to changes in occupier etc: see SI 2007/991 reg 18 (amended by SI 2007/3302). 'Operational rating' means a numeric indicator of the amount of energy consumed during the occupation of the building over a period of 12 months (unless SI 2007/991 reg 18(4) applies) ending no earlier than three months before the nominated date, calculated according to the methodology approved by the Secretary of State for the purposes of SI 2000/2531 reg 17A; and 'nominated date', in relation to a display energy certificate, means a date no later than three months after the end of the period over which the operational rating is calculated, which is nominated by the energy assessor who issued the certificate: SI 2007/991 reg 15.

28 See SI 2007/991 reg 16(1). Except where reg 18(3) applies, on and after 1 October 2008 every occupier of any building to which reg 16 applies must (1) have in its possession or control at all times a valid advisory report; and (2) display at all times a valid display energy certificate in a prominent place clearly visible to the public: reg 16(2) (amended by SI 2007/3302). A display energy certificate is valid for a period of 12 months beginning with the nominated date: SI 2007/991 reg 16(3). An advisory report is a report issued by an energy assessor after his assessment of the building, which contains recommendations for improvement of the energy performance of the building: SI 2007/991 reg 19. It is valid for a period of seven years beginning with the date it is issued: reg 16(4).

29 See SI 2007/991 Pt 4 (regs 20-24).

30 SI 2007/991 reg 31(1). The reference is to advisory reports issued by an energy assessor pursuant to reg 19: reg 2(1).

31 SI 2007/991 reg 31(2) (substituted by SI 2008/2363). The keeper of the register may charge a fee of (1) £1.15 for entering on the register an energy performance certificate and recommendation report which relate to a dwelling; (2) £5.36 for entering on the register an energy performance certificate and recommendation report which relate to any other type of building; (3) £5.36 for entering on the register a display energy certificate; and (4) £5.36 for entering on the register both a display energy certificate and an advisory report: SI 2007/991 reg 32 (substituted by SI 2008/647). 'Keeper of the register' means the Secretary of State or the person keeping a register on the Secretary of State's behalf: SI 2007/991 reg 30.

32 SI 2007/991 reg 31(3).

33 SI 2007/991 reg 31(4).

34 le authorised by SI 2007/991 Pt 6 (regs 30-37). As to authorised disclosure (1) to a person making a request accompanied by a reference number, see SI 2007/991 reg 34; (2) to an approved accreditation scheme operator, see SI 2007/991 reg 35; (3) to enforcement authorities or to an authorised officer of a local authority, see SI 2007/991 reg 36 (amended by SI 2008/647); (4) to the Secretary of State, see SI 2007/991 reg 37 (substituted by SI 2009/1900); (5) in response to a query as to whether an energy performance certificate is entered on the register for the building in question, see SI 2007/991 reg 34A (added by SI 2008/2363); (6) to energy assessors in relation to dwellings, see SI 2007/991 reg 35A (added by SI 2008/2363); (7) to the Energy Saving Trust Limited, see SI 2007/991 reg 35B (added by SI 2008/2363 and substituted by SI 2009/1900); and

(8) to an approved inspector in relation to the building to which the document or data relates, see SI 2007/991 reg 36A (added by SI 2008/2363).

35 See SI 2007/991 reg 33.

36 The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, SI 2007/991.

37 SI 2007/991 reg 50(1), (2).

38 SI 2007/991 reg 38(1), (2). The provisions specified so specified are regs 5(2), (5), 5A(2)-(4), 6(2), 9(2), 10, 16(2), 21(1), 23, 24 and 39(4): reg 38(2). See also SI 2007/991 reg 42 (amended by SI 2010/1456). As to local weights and measures authorities see WEIGHTS AND MEASURES vol 50 (2005 Reissue) PARA 20.

39 See SI 2007/991 reg 39.

40 See SI 2007/991 regs 40, 43, 47 (regs 40, 43 amended by SI 2010/1456). The amount of the penalty charge is recoverable as a debt: see SI 2007/991 reg 46.

41 See SI 2007/991 reg 44.

42 See SI 2007/991 reg 45.

43 SI 2007/991 reg 48(1), (2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 48(3). As to the standard scale see PARA 313.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(5) PLANS AND NOTICES/(i) Giving of Notices, Plans and Certificates/328B. Fire safety information.

328B. Fire safety information.

Where building work consists of or includes the erection or extension of a relevant building¹, or is carried out in connection with a relevant change of use² of a building and a requirement is imposed³ in relation to the work⁴. The person carrying out the work must give fire safety information⁵ to the responsible person⁶ not later than the date of completion of the work, or the date of occupation of the building or extension, whichever is the earlier⁷.

1 A 'relevant building' is a building to which the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541 (see PARA 323 et seq) applies, or will apply after the completion of building work: Building Regulations 2000, SI 2000/2531, reg 16B(3)(b) (reg 16B added by SI 2006/3318).

2 A 'relevant change of use' is a material change of use where, after the change of use takes place, SI 2005/1541 will apply, or continue to apply, to the building: SI 2000/2531 reg 16B(3)(c).

3 ie under SI 2000/2531 Sch 1 Pt B: see PARA 308.

4 SI 2000/2531 reg 16B(1).

5 'Fire safety information' means information relating to the design and construction of the building or extension, and the services, fittings and equipment provided in or in connection with the building or extension which will assist the responsible person to operate and maintain the building or extension with reasonable safety: SI 2000/2531 reg 16B(3)(a)

6 'Responsible person' has the meaning given by SI 2005/1541 art 3 (see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 473): SI 2000/2531 reg 16B(3)(d).

7 SI 2000/2531 reg 16B(2).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(5) PLANS AND NOTICES/(i) Giving of Notices, Plans and Certificates/328C. Water efficiency of new dwellings.

328C. Water efficiency of new dwellings.

The potential consumption of wholesome water by persons occupying a dwelling must not exceed 125 litres per person per day¹.

¹ SI 2000/2531 reg 17K(1) (reg 17K added by SI 2009/1219, and amended by SI 2009/2397). It is calculated in accordance with the methodology set out in the document 'The Water Efficiency Calculator for New Dwellings' published in September 2009 by the Department for Communities and Local Government: SI 2009/2531 reg 17K(1). Regulation 17K applies to a dwelling which is erected or formed by a material change of use of a building within the meaning of reg 5(a) or (b) (PARA 309): reg 17K(2). See also PARA 308.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(5) PLANS AND NOTICES/ (ii) Passing or Rejection of Plans and Imposition of Conditions/329. Passing or rejection of plans.

(ii) Passing or Rejection of Plans and Imposition of Conditions

329. Passing or rejection of plans.

Where plans¹ of any proposed work are, in accordance with building regulations², deposited with a local authority³, it is the duty of the local authority, subject to any other provision of the Building Act 1984 that expressly requires or authorises it in certain cases to reject plans, to pass the plans unless they are defective⁴, or they show that the proposed work would contravene⁵ any of the building regulations⁶. If the plans are defective, or show that the proposed work would contravene any of the building regulations, the local authority may reject the plans, or pass them⁷ subject to either or both of the following conditions⁸. The conditions are that such modifications as the local authority may specify must be made in the deposited plans⁹, and that such further plans as it may specify must be deposited¹⁰. A local authority may only pass plans subject to such a condition if the person by whom or on whose behalf they were deposited has requested it to do so¹¹, or has consented to its doing so¹². Such a request or consent must be in writing¹³.

The authority must within the relevant period¹⁴ from the deposit of the plans give notice¹⁵ to the person by whom or on whose behalf they were deposited whether they have been passed or rejected¹⁶. A notice that plans have been rejected must specify the defects on account of which, or the regulation or provision of the Building Act 1984 for non-conformity with which, or under the authority of which, they have been rejected¹⁷. A notice that plans have been passed must specify any condition subject to which they have been passed¹⁸, and state that the passing of the plans operates as an approval of them only for the purposes of the requirements of the building regulations, and any provision of the Building Act 1984¹⁹ that expressly requires or authorises the local authority in certain cases to reject plans²⁰.

Where the deposited plans are accompanied by:

- 142 (1) a certificate²¹ given by a person approved for these purposes²² to the effect that the proposed work, if carried out in accordance with the deposited plans, will comply with such provisions of the regulations prescribed²³ for these purposes as may be specified in the certificate²⁴; and
- 143 (2) such evidence as may be prescribed that an approved scheme applies, or the prescribed insurance cover has been or will be provided, in relation to the certificate²⁵,

the local authority may not, except in prescribed circumstances²⁶, reject the plans on the ground that:

- 144 (a) they are defective with respect to any provisions of the building regulations that are so specified²⁷; or
- 145 (b) they show that the proposed work would contravene any of those provisions²⁸.

In any case where a question arises²⁹ between a local authority and a person who proposes to carry out any work whether plans of the proposed work are in conformity with building regulations, or whether the local authority is prohibited from rejecting plans of the proposed

work³⁰, that person may refer the question to the Secretary of State for his determination, and an application for such a reference must be accompanied by such fee as may be prescribed³¹. Where deposited plans accompanied by a certificate and evidence³² are passed by the local authority, or notice of the rejection of deposited plans accompanied by a certificate and evidence is not given within the relevant period from the deposit of the plans, the authority may not institute proceedings³³ for a contravention of building regulations that arises out of the carrying out of the proposed work in accordance with the plans, and is a contravention of any of the provisions of the regulations specified in the certificate³⁴.

1 As to the meaning of 'plans' see para 307 note 8 ante.

2 For the meaning of 'building regulations' see para 306 ante.

3 For the meaning of 'local authority' see para 301 note 12 ante.

4 Building Act 1984 s 16(1)(a).

5 As to the meaning of 'contravene' see para 310 note 10 ante.

6 Building Act 1984 s 16(1)(b). A local authority which wrongly approves faulty design plans owes no duty of care to a building owner who is consequently in breach of building regulations: *Investors in Industry Commercial Properties Ltd v South Bedfordshire District Council (Ellison & Partners (a firm), third parties)* [1986] QB 1034, [1986] 1 All ER 787, CA.

7 le subject to the Building Act 1984 s 16(4): see the text to notes 11-12 infra.

8 Ibid s 16(2).

9 Ibid s 16(3)(a).

10 Ibid s 16(3)(b).

11 Ibid s 16(4)(a).

12 Ibid s 16(4)(b).

13 Ibid s 16(5).

14 For the purposes of ibid Pt I (ss 1-46) (as amended), 'the relevant period', in relation to the passing or rejection of plans, means five weeks or such extended period (expiring not later than two months from the deposit of the plans) as may before the expiration of the five weeks be agreed in writing between the person depositing the plans and the local authority: s 16(12).

15 As to the form, authentication and service of notices see paras 418-420 post.

16 Building Act 1984 s 16(6).

17 Ibid s 16(7).

18 Ibid s 16(8)(a).

19 le other than ibid s 16 (as amended).

20 Ibid s 16(8)(b).

21 Every local authority must keep, in such manner as may be prescribed, a register containing such information as may be prescribed with respect to certificates given to it under ibid s 16(9), including information, where applicable, as to whether such certificates have been accepted or rejected: s 56(1) (amended by the Deregulation (Building) (Initial Notices and Final Certificates) Order 1996, SI 1996/1905, arts 3(1), (9), 5, in relation to initial notices which came into force on or after 14 October 1996), Building Act 1984 s 56(3). Every register kept under s 56 (as amended) must be available for inspection by the public at all reasonable hours: s 56(4).

It has been so prescribed that the register which local authorities must keep under s 56 (as amended) with respect to certificates given under s 16(9) which have been accepted or are presumed to have been accepted

must contain information as to: (1) the description of the work to which the certificate relates and of the location of the work; (2) the name and address of any person who signed the certificate; (3) the name and address of the insurer who signed any declaration which accompanied the certificate; and (4) the date on which the certificate was accepted or was presumed to have been accepted: Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 30(1)(b), (2). The information prescribed in heads (1)-(4) supra must be entered in the register as soon as practicable and in any event within 14 days of the occurrence to which it relates: reg 30(5). A register must include an index for enabling a person to trace any entry in the register by reference to the address of the land to which the notice or certificate relates: reg 30(4).

22 The provisions of *ibid* regs 3-7 (see para 354 post) apply in relation to the approval and the termination of approval of persons to certify plans in accordance with the Building Act 1984 s 16(9), and the designation and the termination of designation of bodies to approve such persons, as they do in relation to the approval of inspectors and the designation of bodies to approve inspectors respectively: Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 29(1).

23 le prescribed by building regulations: see Building Act 1984 s 126. The Building Regulations 2000, SI 2000/2531, regs 4, 6 (as amended) (see paras 308-309 ante) are prescribed provisions for the purposes of the Building Act 1984 s 16(9) in so far as either requires compliance with the Building Regulations 2000, SI 2000/2531, Sch 1 Pt A (structure) (see para 308 ante) and Sch 1 Pt L (as substituted) (conservation of fuel and power) (see para 308 ante): Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 29(2).

24 Building Act 1984 s 16(9)(a). If a person: (1) gives a notice or certificate that purports to comply with the requirements of s 16(9) and that contains a statement that he knows to be false or misleading in a material particular; or (2) recklessly gives a notice or certificate that purports to comply with those requirements, and that contains a statement that is false or misleading in a material particular, he is guilty of an offence: s 57(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum or imprisonment for a term not exceeding six months or both, and on conviction on indictment to a fine or imprisonment for a term not exceeding two years or both: s 57(2). Where a person approved for the purposes of s 16(9) convicted of such an offence, the court by or before whom he is convicted must, within one month of the date of conviction, forward a certificate of the conviction to the person by whom the approval was given: s 57(3). The 'statutory maximum', with reference to a fine or penalty on summary conviction for an offence, is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 140. The 'prescribed sum' means £5,000 or such sum as is for the time being substituted in this definition by order under the Magistrates' Courts Act 1980 s 143(1) (as substituted): see s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 141.

25 Building Act 1984 s 16(9)(b). Where deposited plans are accompanied by a certificate as mentioned in s 16(9), the evidence of insurance required is a declaration signed by the insurer that a named scheme of insurance approved by the Secretary of State applies in relation to the certificate which accompanies the plans: Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 29(3). As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

26 The prescribed circumstances are where:

- 15 (1) the certificate states that the work shown in the plans complies with the requirements of the Building Regulations 2000, SI 2000/2531, Sch 1 Pt A (structure) (see para 308 ante) (Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 29(4)(a));
- 16 (2) the Building Regulations 2000, SI 2000/2531, Sch 1 para A3 (see para 308 ante) applies to the work shown in the plans (Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 29(4)(b)); and
- 17 (3) the certificate does not contain a declaration that the person giving the certificate does not, and will not until the work is complete, have a professional or financial interest in the work (reg 29(4)(c)).

A person approved under the Building Act 1984 s 16(9) must have no professional or financial interest in the work he supervises unless it is minor work: Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, regs 10(2), 29(5). Such a person will be regarded as having a professional or financial interest in the work described in such a certificate if: (a) he is or has been responsible for the design or construction of any of the work in any capacity; or (b) he or any nominee of his is a member, officer or employee of a company or other body which has a professional or financial interest in the work; or (c) he is a partner or is in the employment of a person who has a professional or financial interest in the work: regs 10(3), 29(5). For these purposes, a person will be treated as having a professional or financial interest in the work even if he has that interest only as trustee for the benefit of some other person, and in the case of married people living together, the interest of one spouse, if known to the other, is deemed to be also an interest of the other: regs 10(4), 29(5). For these

purposes, (i) involvement in the work as an approved inspector; (ii) entitlement to any fee paid for his function as an approved inspector; and (iii) potential liability to pay any sum if a claim is made under the insurance cover provided for the purposes of the Building Act 1984, are not to be regarded as constituting a professional or financial interest: Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, regs 10(5), 29(5).

27 Building Act 1984 s 16(9)(i).

28 Ibid s 16(9)(ii).

29 Ie under ibid s 16 (as amended).

30 Ie by virtue of ibid s 16(9): see the text and notes 21-28 supra.

31 Ibid s 16(10). The prescribed fees are: (1) where the question is whether plans of proposed work are in conformity with building regulations, an amount equal to half the plan charge fixed by the scheme made and published by the local authority concerned, subject to a minimum fee of £50 and a maximum of £500; or (2) where the question is whether the local authority is prohibited from rejecting plans of proposed work by virtue of s 16(9), £50: Building (Local Authority Charges) Regulations 1998, SI 1998/3129, reg 15(1).

32 See heads (1), (2) in the text.

33 Ie under the Building Act 1984 s 35: see para 343 post.

34 Ibid s 16(11).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

329 Passing or rejection of plans

NOTE 21-1984 Act s 56(1)-(4) prospectively repealed: Sustainable and Secure Buildings Act 2004 Schedule.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(5) PLANS AND NOTICES/ (ii) Passing or Rejection of Plans and Imposition of Conditions/330. Approval of persons to give certificates.

330. Approval of persons to give certificates.

Building regulations¹ may make provision for the approval of persons to give certificates that building work, if carried out in accordance with deposited plans, will comply with the relevant building regulations²: (1) by the Secretary of State³; or (2) by a body (corporate or unincorporated) that, in accordance with the regulations, is designated by the Secretary of State for the purpose⁴. Any such approval may limit the description of work, or the provisions of the regulations, in relation to which the person concerned is approved⁵. Any such designation of a body as is referred to in head (2) above may limit the cases in which and the terms on which the designated body may approve a person and, in particular, may provide that any approval given by the body must be limited as mentioned above⁶. There must be paid on an application for any such approval, where the application is made to the Secretary of State, such fee as may be prescribed⁷, and where the application is made to a designated body, such fee as that body may determine⁸. The Secretary of State may approve⁹ any scheme that appears to him to secure the provision of adequate insurance cover in relation to any certificate that is given¹⁰ and is a certificate to which the scheme applies¹¹.

Building regulations may prescribe the insurance cover that is to be provided in relation to any such certificate¹² and which is not a certificate to which an approved scheme applies and may, in particular, prescribe the form and content of policies of insurance¹³.

Building regulations may:

- 146 (a) contain provision prescribing the period for which, subject to any provision made by virtue of head (b) or head (c) below, any such approval continues in force¹⁴;
- 147 (b) contain provision precluding the giving of, or requiring the withdrawal of, any such approval in such circumstances as may be prescribed¹⁵;
- 148 (c) contain provision authorising the withdrawal of any such approval or designation¹⁶;
- 149 (d) provide for the maintenance by the Secretary of State of a list of bodies that are for the time being designated by him and for the maintenance by the Secretary of State and by each designated body of a list of persons for the time being approved by him or them¹⁷;
- 150 (e) make provision for the supply to local authorities¹⁸ of copies of any list of approved persons maintained by virtue of head (d) above and for such copy lists to be made available for inspection¹⁹; and
- 151 (f) make provision for the supply, on payment of a prescribed fee, of a certified copy of any entry in a list maintained by virtue of head (d) above or in a copy list held by a local authority by virtue of head (e) above²⁰.

1 For the meaning of 'building regulations' see para 306 ante.

2 I.e. for the purposes of the Building Act 1984 s 16(9): see para 329 ante. As to supervision of building works by approved inspectors see para 354 post.

3 Ibid s 17(1)(a). As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

4 Ibid s 17(1)(b).

5 Ibid s 17(1).

6 Ibid s 17(2).

7 Ibid s 17(3)(a). 'Prescribed' means prescribed by building regulations: see s 126.

8 Ibid s 17(3)(b).

9 Ie the purposes of ibid s 16(9): see para 329 ante.

10 Ie under ibid s 16(9)(a): see para 329 ante.

11 Ibid s 17(4).

12 Ie under ibid s 16(9)(a): see para 329 ante.

13 Ibid s 17(5).

14 Ibid s 17(6)(a).

15 Ibid s 17(6)(b).

16 Ibid s 17(6)(c).

17 Ibid s 17(6)(d). Unless the contrary is proved, in any proceedings, whether civil or criminal, a document that appears to the court to be a certified copy of an entry in a list maintained as mentioned in head (d) in the text is presumed to be a true copy of an entry in the current list so maintained, and is evidence of the matters stated in it: s 17(7).

18 For the meaning of 'local authority' see para 301 note 12 ante.

19 Building Act 1984 s 17(6)(e). Unless the contrary is proved, in any proceedings, whether civil or criminal, a document that appears to the court to be a certified copy of an entry in a list supplied as mentioned in head (e) in the text is presumed to be a true copy of an entry in the current list so maintained, and is evidence of the matters stated in it: s 17(7).

20 Ibid s 17(6)(f).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(5) PLANS AND NOTICES/ (ii) Passing or Rejection of Plans and Imposition of Conditions/331. Use of short-lived materials.

331. Use of short-lived materials.

Until a day to be appointed, the provisions described below have effect¹. Building regulations² may provide that these provisions apply to any materials specified in the regulations as being materials that are, in the absence of special care, liable to rapid deterioration, or are otherwise unsuitable for use in the construction of permanent buildings³.

Where plans⁴ of a building are, in accordance with building regulations, deposited⁵ with a local authority⁶, and the plans show that it is proposed to construct⁷ a building of such materials, or to place or assemble on the site a building constructed of such materials, the authority may, notwithstanding that the plans conform with the regulations reject the plans, or in passing the plans fix a period on the expiration of which the building must be removed, and impose with respect to the use of the building such reasonable conditions, if any, as having regard to the nature of the materials used in its construction it deems appropriate⁸. However, no condition may be imposed that conflicts with any condition imposed on the grant of planning permission for that building under Part III of the Town and Country Planning Act 1990⁹. If a building, in respect of which plans ought under the building regulations to have been deposited, but have not been deposited, appears to the authority to be constructed of such materials, the authority, without prejudice to its right to take proceedings in respect of any contravention¹⁰ of the regulations, may fix a period on the expiration of which the building must be removed, and if it thinks fit, impose such conditions with respect to the use of the building as might have been imposed¹¹ upon the passing of plans for the building, and where it fixes such a period it must forthwith give notice of it, and of any conditions imposed, to the owner¹² of the building¹³. A local authority may from time to time extend any period so fixed, or vary any conditions so imposed¹⁴. However, unless an application in that behalf is made to it by the owner of the building in question, it must not exercise its power of varying conditions except when granting an extension, or further extension, of the period fixed with respect to the building¹⁵. A person aggrieved¹⁶ by such an action of a local authority in rejecting plans, or in fixing or refusing to extend any period, or in imposing or refusing to vary any conditions, may appeal to a magistrates' court¹⁷.

The owner of a building in respect of which a period has been fixed must, on the expiration of that period, or, as the case may be, of that period as extended, remove the building, and, if he fails to do so the local authority must remove it and may recover from him the expenses reasonably incurred by it in so doing¹⁸ and without prejudice to the right of the authority to exercise that power, he is liable on summary conviction to a fine¹⁹ and also to a further fine for each day during which the building is allowed to remain after he is convicted²⁰. In addition, a person who uses a building in contravention of a condition imposed in this way, or who permits a building to be so used, is liable on summary conviction to a fine²¹ and also to a further fine for each day on which the offence continues after he is convicted²².

1 The Building Act 1984 s 19 (as amended) ceases to have effect upon the coming into force of s 20 (as amended), which supersedes it: s 19(9) (prospectively repealed). At the date at which this volume states the law no order under s 134(1) bringing s 20 (as amended) into force had been made. As to the provision to be made by s 20 (as amended) when it is eventually brought into force see para 332 post.

2 For the meaning of 'building regulations' see para 306 ante.

3 Building Act 1984 s 19(7) (prospectively repealed: see note 1 supra). Section 19 (as amended) applies in relation to an extension of an existing building as it applies in relation to a new building: s 19(8) (prospectively repealed: see note 1 supra). For the meaning of 'building' see para 305 ante.

4 As to the meaning of 'plans' see para 307 note 8 ante.

5 As to references to the deposit of plans in accordance with building regulations see para 319 note 18 ante.

6 For the meaning of 'local authority' see para 301 note 12 ante.

7 For the meaning of 'construct' see para 307 note 3 ante.

8 Building Act 1984 s 19(1) (prospectively repealed: see note 1 supra).

9 Ibid s 19(1) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 67(1)). As to the prospective repeal of the Building Act 1984 s 19 (as amended) see note 1 supra. The text refers to the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) para 217 et seq.

10 As to the meaning of 'contravention' see para 310 note 10 ante.

11 Ie under the Building Act 1984 s 19(1) (as amended; prospectively repealed): see the text to notes 1-9 supra.

12 For the meaning of 'owner' see para 310 note 2 ante.

13 Building Act 1984 s 19(2) (prospectively repealed: see note 1 supra).

14 Ibid s 19(3) (prospectively repealed: see note 1 supra).

15 Ibid s 19(3) (as prospectively repealed: see note 1 supra).

16 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARA 656.

17 Building Act 1984 s 19(4) (prospectively repealed: see note 1 supra). As to magistrates' courts see MAGISTRATES. As to appeals generally see paras 422-423 post.

18 Ibid s 19(5)(a) (prospectively repealed: see note 1 supra).

19 The fine imposed is one not exceeding level 1 on the standard scale: see ibid s 19(5)(b) (prospectively repealed: see note 1 supra). As to the standard scale see para 313 note 7 ante.

20 Ibid s 19(5)(b) (prospectively repealed: see note 1 supra). The fine imposed must not exceed £5 for each day on which the default continues after conviction: see s 19(5)(b) (prospectively repealed: see note 1 supra). As to continuing offences see para 427 post.

21 The fine imposed is one not exceeding level 1 on the standard scale: see ibid s 19(6) (prospectively repealed: see note 1 supra).

22 Ibid s 19(6) (prospectively repealed: see note 1 supra). The fine imposed must not exceed £5 for each day on which the default continues after conviction: see s 19(6) (prospectively repealed: see note 1 supra).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(5) PLANS AND NOTICES/ (ii) Passing or Rejection of Plans and Imposition of Conditions/332. Use of materials unsuitable for permanent building.

332. Use of materials unsuitable for permanent building.

As from a day to be appointed, the provisions described below have effect¹. Where plans² of any proposed work³ are, in accordance with building regulations, deposited⁴ with a local authority⁵, and the plans show that the proposed work would include or consist of such work, the authority may, notwithstanding that the plans conform with the regulations reject the plans⁶, or in passing the plans:

- 152 (1) fix a period on the expiration of which such work or the relevant building⁷ (as the authority may in passing the plans direct) must be removed⁸; and
- 153 (2) if it thinks fit, impose with respect to the use of the relevant building or with respect to the work such reasonable conditions, if any, as it considers appropriate⁹.

However, no condition as to the use of the relevant building may be imposed that conflicts with any condition imposed or having effect as if imposed under Part III¹⁰ or Part VIII¹¹ of the Town and Country Planning Act 1990, or under the Planning (Listed Buildings and Conservation Areas) Act 1990¹² or the Planning (Hazardous Substances) Act 1990¹³.

If, in the case of any work in respect of which plans ought by virtue of building regulations to have been deposited with a local authority but have not been so deposited, the work appears to the authority to include or consist of such work, the authority, without prejudice to its right to take proceedings in respect of any contravention¹⁴ of the regulations, may fix a period on the expiration of which the work or the relevant building (as the authority may in fixing the period direct) must be removed, and if it thinks fit, impose any conditions that might have been imposed in passing plans for the first-mentioned work, and where it fixes such a period it must forthwith give notice of it, and of any conditions imposed, to the owner¹⁵ of the relevant building¹⁶.

If, in the case of any work appearing to the local authority to be work provided in or in connection with a building, being work consisting of a service, fitting or item of equipment of a type which has been prescribed by the Secretary of State as likely to be unsuitable¹⁷, and plans of the work were not required by building regulations to be deposited with the authority, and were not so deposited, the authority may at any time within 12 months from the date of completion of the work fix a period on the expiration of which the work must be removed, and if it thinks fit, impose any conditions that, if plans of the work had been required to be, and had been, so deposited, might have been imposed¹⁸ in passing the plans, and where it fixes such a period it must forthwith give notice of it, and of any conditions imposed, to the owner of the relevant building¹⁹.

A local authority may from time to time extend any period fixed, or vary any conditions imposed, but, unless an application in that behalf is made to it by the owner of the relevant building, it must not exercise its power of varying conditions except when granting an extension or further extension of the period fixed with respect to the work or building, as the case may be²⁰.

A person aggrieved²¹ by the action of a local authority in rejecting plans, in fixing or refusing to extend any period, or in imposing or refusing to vary any conditions, may appeal to the Secretary of State within the prescribed time and in the prescribed manner²².

Where a period has been fixed with respect to any such work or with respect to the relevant building the owner of that building must on the expiration of that period, or, as the case may be, of that period as extended, remove the work or building with respect to which the period was fixed²³, and if he fails to do so, the local authority may remove that work or building, as the case may be, and may recover from him the expenses reasonably incurred by it in doing so²⁴.

A person who contravenes a condition so imposed or permits such a condition to be contravened or who fails to remove the work or building with respect to which the period was so fixed²⁵ is liable on summary conviction to a fine²⁶, and also to a further fine for each day on which the offence continues or, as the case may be, on which the work or building is allowed to remain after he is convicted²⁷.

1 The Building Act 1984 s 20 (as amended) (see the text and notes 2-27 infra) is to be brought into force by order made by the Secretary of State under s 134(1)(b) as from a day to be appointed. At the date at which this volume states the law no such order had been made. Upon s 20 (as amended) being brought into force, s 19 (as amended) ceases to have effect: see s 19(9) (prospectively repealed). As to the provision currently made by s 19 (as amended) see para 331 ante. Upon s 19 (as amended) ceasing to have effect: (1) any building regulations made, period fixed, condition imposed or other thing done by virtue of s 19 (as amended) will be deemed to have been made, fixed, imposed or done by virtue of s 20 (as amended) (not yet in force) (s 20(11) (a) (not yet in force)); and (2) anything begun under s 19 (as amended) may be continued under the Building Act 1984 as if begun under s 20 (as amended) (not yet in force), but any appeal under s 19(4) that is pending at the time when s 19 (as amended) ceases to have effect, and any proceedings arising out of such an appeal, must proceed as if s 19 (as amended) were still in force (s 20(11)(b) (not yet in force)). As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante. For the meaning of 'building regulations' see para 306 ante.

2 As to the meaning of 'plans' see para 307 note 8 ante.

3 The Building Act 1984 s 20 (as amended, but not yet in force) applies to any work:

18 (1) consisting of a part of a building, being a part in the construction of which there is used any material or component of a type that, in relation to a part of that description, is prescribed for these purposes under s 20(10) (not yet in force) (s 20(9)(a) (not yet in force: see note 1 supra)); and

19 (2) provided in or in connection with a building, being work consisting of a service, fitting or item of equipment of a type so prescribed for these purposes (s 20(9)(b) (not yet in force: see note 1 supra)).

The Secretary of State may by building regulations prescribe a type of material or component for the purposes of head (1) supra if in his opinion materials or components of that type are likely to be unsuitable for use in the construction of a particular part of a permanent building in the absence of conditions with respect to the use of the building or with respect to any material or component of that type used in the construction of a part of that description: s 20(10)(a) (not yet in force: see note 1 supra). The Secretary of State may by building regulations prescribe a type of service, fitting or equipment for the purposes of head (2) supra if in his opinion services, fittings or equipment of that type are likely to be unsuitable for provision in or in connection with a permanent building in the absence of conditions with respect to the use of the building or with respect to a service, fitting or equipment of that type so provided: s 20(10)(b) (not yet in force: see note 1 supra). For the meaning of 'building' see para 305 ante. 'Prescribed' means prescribed by building regulations: see s 126.

4 As to references to the deposit of plans in accordance with building regulations see para 319 note 18 ante.

5 For the meaning of 'local authority' see para 301 note 12 ante.

6 Building Act 1984 s 20(1)(a) (not yet in force: see note 1 supra). As to notification that plans have been rejected or passed see para 329 ante.

7 For these purposes, 'the relevant building' means, in any particular case, the building mentioned in ibid s 20(9)(a) (not yet in force) (see note 3 supra) or, as the case may be, s 20(9)(b) (not yet in force) (see note 3 supra): s 20(8) (not yet in force: see note 1 supra).

8 Ibid s 20(1)(b)(i) (not yet in force: see note 1 supra).

9 Ibid s 20(1)(b)(ii) (not yet in force: see note 1 supra).

10 Ie the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) (control over development): see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) para 217 et seq.

11 Ie ibid Pt VIII (ss 197-225) (as amended) (special controls): see TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) para 847 et seq.

12 See TOWN AND COUNTRY PLANNING.

13 Building Act 1984 s 20(1) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 67(2)). As to the bringing into force of the Building Act 1984 s 20 (as amended) see note 1 supra.

14 As to the meaning of 'contravention' see para 310 note 10 ante.

15 For the meaning of 'owner' see para 310 note 2 ante.

16 Building Act 1984 s 20(2) (not yet in force: see note 1 supra).

17 Ie work which appears to the local authority to fall within ibid s 20(9)(b) (not yet in force): see note 3 supra.

18 Ie under ibid s 20(1) (not yet in force): see the text and notes 2-13 supra.

19 Ibid s 20(3) (not yet in force: see note 1 supra).

20 Ibid s 20(4) (not yet in force: see note 1 supra).

21 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARA 656.

22 Building Act 1984 s 20(5) (not yet in force: see note 1 supra).

23 Ibid s 20(6)(a) (not yet in force: see note 1 supra).

24 Ibid s 20(6)(b) (not yet in force: see note 1 supra).

25 Ie a person who contravenes ibid s 20(6) (not yet in force): see the text and notes 23-24 supra.

26 The fine imposed is one not exceeding level 5 on the standard scale: see ibid s 20(7) (not yet in force: see note 1 supra). As to the standard scale see para 313 note 7 ante.

27 Ibid s 20(7) (not yet in force: see note 1 supra). The fine imposed must not exceed £50 for each day on which the default continues after conviction: see s 20(7) (not yet in force: see note 1 supra). However, s 20(7) (not yet in force) does not prejudice a local authority's rights under s 20(6) (not yet in force) (see the text and notes 23-24 supra): s 20(7) (not yet in force: see note 1 supra). As to continuing offences see para 427 post.

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(5) PLANS AND NOTICES/ (ii) Passing or Rejection of Plans and Imposition of Conditions/333. Provision of drainage.

333. Provision of drainage.

Where plans¹ of a building² or of an extension of a building are, in accordance with building regulations³, deposited with a local authority⁴, the local authority, or on appeal a magistrates' court⁵, may require a proposed drain⁶ to connect with a sewer⁷ where⁸:

- 154 (1) that sewer is within 100 feet of the site of the building or, in the case of an extension, the site either of the extension or of the original building, and is at a level that makes it reasonably practicable to construct⁹ a drain to communicate with it, and, if it is not a public sewer¹⁰, is a sewer that the person constructing the drain is entitled to use¹¹; and
- 155 (2) the intervening land is land through which that person is entitled to construct a drain¹².

Any question arising¹³ between a local authority and the person by whom, or on whose behalf, plans are deposited as to whether a proposed drain is to be connected with a sewer may on the application of that person be determined by a magistrates' court¹⁴.

Notwithstanding head (1) above, a drain may be required to be made to connect with a sewer that is not within the distance specified there, but is otherwise such a sewer, if the authority undertakes to bear so much of the expenses reasonably incurred in constructing, and in maintaining and repairing, the drain as may be attributable to the fact that the distance of the sewer exceeds the distance mentioned in head (1) above¹⁵. If any question arises as to the amount of a payment to be so made to a person, that question may on his application be determined by a magistrates' court, or he may require it to be referred to arbitration¹⁶.

1 As to the meaning of 'plans' see para 307 note 8 ante.

2 For the meaning of 'building' see para 305 ante.

3 For the meaning of 'building regulations' see para 306 ante.

4 For the meaning of 'local authority' see para 301 note 12 ante. As to references to the deposit of plans in accordance with building regulations see para 319 note 18 ante.

5 See MAGISTRATES.

6 'Drain' means a drain used for the drainage of one building or of buildings or yards appurtenant to buildings within the same curtilage, and manholes, ventilating shafts, pumps or other accessories belonging to the drain: Building Act 1984 s 126.

7 'Sewer' does not include a drain (see note 6 supra), but otherwise it includes all sewers and drains used for the drainage of buildings and yards appurtenant to buildings, and any manholes, ventilating shafts, pumps or other accessories belonging to the sewer: *ibid* s 126.

8 *Ibid* s 21(4) (substituted by the Building (Amendment) Regulations 2001, SI 2001/3335, reg 1(1)).

9 For the meaning of 'construct' see para 307 note 3 ante.

10 For these purposes, 'public sewer' has the same meaning as in the Water Industry Act 1991 s 219(1) (see WATER AND WATERWAYS vol 100 (2009) PARA 138): Building Act 1984 s 126 (definition substituted by the Water Act 1989 s 190(1), (3), Sch 25 para 70(4), Sch 27 Pt I; and amended by the Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1 para 39(1), (6)).

11 Building Act 1984 s 21(4)(a). The site of the building may in some cases extend to include a detached outbuilding within the curtilage of the main building: *Meyrick v Pembroke Corpn* (1912) 76 JP 365, DC; cf *Wright v Wallasey Local Board* (1887) 18 QBD 783.

12 Building Act 1984 s 21(4)(b).

13 Ie under ibid s 21(4) (as amended): see the text and notes 1-12 supra.

14 Ibid s 21(3) (amended by the Building (Amendment) Regulations 2001, SI 2001/3335, regs 1(1), 3(2)(b)). As to the procedure on applications to a magistrates' court see the Building Act 1984 s 103(1); and para 422 post.

15 Ibid s 21(5). The words 'require' and 'undertake' were construed as requiring a resolution of the authority in *Princes Investments Ltd v Firmley and Camberley UDC* [1962] 1 QB 681, [1962] 2 All ER 104, DC. See also *Provident Mutual Life Assurance Association v Derby City Council* [1981] 1 WLR 173, HL, where it was held that no resolution was required for a council to hold an 'opinion' or to 'think fit'.

16 Building Act 1984 s 21(6). In an arbitration under the Building Act 1984, the reference is to a single arbitrator appointed by agreement between the parties, or in default of agreement by the Secretary of State: s 111. As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante. The provisions of the Arbitration Act 1996, subject to certain exceptions and adaptations, apply to an arbitration under the Building Act 1984 s 111: see the Arbitration Act 1996 s 94; and ARBITRATION vol 2 (2008) PARA 1209. As to the making of building regulations to modify or repeal the provisions of the Building Act 1984 s 111 on the grounds of inconsistency with other provisions, etc see s 1(3), Sch 1 para 11(1); and para 307 ante.

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329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(5) PLANS AND NOTICES/ (ii) Passing or Rejection of Plans and Imposition of Conditions/334. Drainage of buildings in combination.

334. Drainage of buildings in combination.

Where a local authority¹ might² require each of two or more buildings³ to be drained separately into an existing sewer⁴, but it appears to the authority that those buildings may be drained more economically or advantageously in combination, the authority may, when the drains⁵ of the buildings are first laid, require that the buildings be drained in combination into the existing sewer by means of a private sewer⁶ to be constructed⁷ either by the owners⁸ of the buildings in such manner as the authority may direct or, if the authority so elects, by the authority on behalf of the owners⁹. A local authority must not, except by agreement with the owners concerned, exercise this power in respect of any building for which drainage plans¹⁰ have been previously passed by it¹¹.

A local authority which makes such a requirement must fix the proportions in which the expenses of constructing, and of maintaining and repairing, the private sewer are to be borne by the owners concerned¹², or in a case in which the distance of the existing sewer from the site of any of the buildings in question is or exceeds 100 feet, it must fix the proportions in which those expenses are to be borne by the owners concerned and the local authority, and must forthwith give notice¹³ of its decision to each owner affected¹⁴. An owner aggrieved¹⁵ by the decision¹⁶ of a local authority concerning the fixing of such proportions may appeal to a magistrates' court¹⁷. Subject to any such appeal, any expenses reasonably incurred in constructing, or in maintaining or repairing, the private sewer must be borne in the proportions so fixed¹⁸, and those expenses, or, as the case may be, contributions to them, may be recovered accordingly by the persons, whether the local authority or the owners, by whom they were incurred in the first instance¹⁹.

A sewer so constructed by a local authority is not deemed to be a public sewer by reason of the fact that the expenses of its construction are in the first instance defrayed by the authority, or that some part of those expenses are borne by it²⁰.

1 For the meaning of 'local authority' see para 301 note 12 ante.

2 Ie under the Building Act 1984 s 21 (as amended): see para 333 ante.

3 For the meaning of 'building' see para 305 ante.

4 For the meaning of 'sewer' see para 333 note 7 ante.

5 For the meaning of 'drain' see para 333 note 6 ante.

6 'Private sewer' means a sewer that is not a public sewer: Building Act 1984 s 126. For these purposes, 'public sewer' has the same meaning as in the Water Industry Act 1991 s 219(1) (see WATER AND WATERWAYS vol 100 (2009) PARA 138): Building Act 1984 s 126 (definition substituted by the Water Act 1989 s 190(1), (3), Sch 25 para 70(4), Sch 27 Pt I; and amended by the Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1 para 39(1), (6)).

7 A reference in the Building Act 1984 Pt I (ss 1-46) (as amended) to the construction of a sewer includes a reference to the extension of an existing sewer: s 125(1).

8 For the meaning of 'owner' see para 310 note 2 ante.

9 Building Act 1984 s 22(1). As to the making of building regulations to modify or repeal the provisions of s 22 on the grounds of inconsistency with other provisions, etc see s 1(3), Sch 1 para 11(1); and para 307 ante.

- 10 As to the meaning of 'plans' see para 307 note 8 ante.
- 11 Building Act 1984 s 22(2).
- 12 Ibid s 22(3)(a).
- 13 For the form of notices see para 418 post. For the authentication of notices and their service see paras 419-420 post.
- 14 Building Act 1984 s 22(3)(b).
- 15 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARA 656.
- 16 Ie under the Building Act 1984 s 22(3): see the text to notes 12-14 supra.
- 17 Ibid s 22(4). As to magistrates' courts see MAGISTRATES. As to appeals generally see paras 422-423 post.
- 18 Ibid s 22(5)(a).
- 19 Ibid s 22(5)(b).
- 20 Ibid s 22(6).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(5) PLANS AND NOTICES/ (ii) Passing or Rejection of Plans and Imposition of Conditions/335. Provision of facilities for refuse.

335. Provision of facilities for refuse.

It is unlawful for any person except with the consent¹ of the local authority² to close or obstruct the means of access by which refuse or faecal matter is removed from a building³, and the local authority in giving its consent may impose such conditions as it thinks fit with respect to the improvement of an alternative means of access or the substitution of other means of access⁴. A person who contravenes⁵ this provision is liable on summary conviction to a fine⁶.

1 Such consent must be given in writing: see the Building Act 1984 s 92(1); and para 418 post.

2 For the meaning of 'local authority' see para 301 note 12 ante.

3 For the meaning of 'building' see para 305 ante.

4 Building Act 1984 s 23(3). As to the making of building regulations to modify or repeal the provisions of s 23 (as amended) on the grounds of inconsistency with other provisions, etc see s 1(3), Sch 1 para 11(1); and para 307 ante.

5 As to the meaning of 'contravene' see para 310 note 10 ante.

6 Building Act 1984 s 23(4). The fine imposed must not exceed level 4 on the standard scale: s 23(2). As to the standard scale see para 313 note 7 ante.

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(5) PLANS AND NOTICES/ (ii) Passing or Rejection of Plans and Imposition of Conditions/336. Provision of exits, etc.

336. Provision of exits, etc.

Where:

- 156 (1) plans¹ of a building² or of an extension of a building are, in accordance with building regulations³, deposited⁴ with a local authority⁵; and
 157 (2) the building or, as the case may be, the building as extended will be a building to which the following provisions apply⁶,

the authority must reject the plans⁷ unless they show that the building, or, as the case may be, the building as extended, will be provided with such means of ingress and egress and passages or gangways⁸ as the authority, after consultation with the fire authority⁹, deems satisfactory, regard being had to the purposes for which the building is intended to be, or is, used and the number of persons likely to resort to it at any one time¹⁰. Any question arising¹¹ between a local authority and the person by whom, or on whose behalf, plans are deposited as to whether the means of ingress or egress or passages or gangways already existing, or proposed to be provided, ought to be accepted by the authority as satisfactory may on the application of that person be determined by a magistrates' court¹².

Where building regulations imposing requirements as to the provision of means of escape in case of fire are applicable to a proposed building or proposed extension of a building, or would be so applicable but for a direction¹³ dispensing with such requirements the provisions described above, and any provision of a local Act that has effect in their place, does not apply in relation to the proposed building or extension¹⁴.

1 For the meaning of 'plans' see para 307 note 8 ante.

2 For the meaning of 'building' see para 305 ante.

3 For the meaning of 'building regulations' see para 306 ante.

4 As to references to the deposit of plans in accordance with building regulations see para 319 note 18 ante.

5 For the meaning of 'local authority' see para 301 note 12 ante.

6 Subject to the Building Act 1984 s 24(3), s 24 applies to:

20 (1) a theatre, and a hall or other building that is used as a place of public resort (s 24(4)(a));

21 (2) a restaurant, shop, store or warehouse to which members of the public are admitted and in which more than 20 persons are employed (s 24(4)(b));

22 (3) a club required to be registered under the Licensing Act 1964 (see LICENSING AND GAMBLING) (Building Act 1984 s 24(4)(c));

23 (4) a school not exempted from the operation of building regulations (s 24(4)(d)); and

24 (5) a church, chapel or other place of public worship (s 24(4)(e)),

but not:

25 (a) a private house to which members of the public are admitted occasionally or exceptionally (s 24(4)(i));

- 26 (b) a building that was used as a church, chapel or other place of public worship immediately before the date on which the Public Health Acts Amendment Act 1890 s 36 (repealed), or a corresponding provision in a local Act, came into operation in the district or rating district (Building Act 1984 s 24(4)(ii)); or
- 27 (c) a building that was so used immediately before 1 October 1937 (the commencement date of the Public Health Act 1936 (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH)) in a district or rating district where neither the Public Health Acts Amendment Act 1890 s 36 (repealed) nor such a corresponding provision ever came into operation (Building Act 1984 s 24(4)(iii)).

As to the meaning of 'school' see para 313 note 10 ante. For the meaning of 'house' see para 313 note 10 ante. As to the meaning of 'local Act' see para 305 note 2 ante.

The provisions of s 24(1), (2), (4) do not apply to inner London: Sch 3 para 1. For the meaning of 'inner London' see para 303 note 10 ante.

7 As to the notice of rejection see *ibid* s 16(6), (7); and para 329 ante.

8 A passageway is not a gangway: *Jennings v Norman Collison (Contractors) Ltd* [1970] 1 All ER 1121, CA.

9 For these purposes, 'fire authority' has the same meaning as in the Fire Precautions Act 1971 s 43(1) (see FIRE SERVICES vol 18(2) (Reissue) para 17): Building Act 1984 s 126.

10 *Ibid* s 24(1). See note 6 supra. The local authority is not entitled to reject the plans on account of the narrowness of, and congestion of traffic in, adjoining streets: *R v Cambridge Corpn, ex p Cambridge Picture Playhouse Ltd* [1922] 1 KB 250, DC.

As to the making of building regulations to modify or repeal the provisions of the Building Act 1984 s 24 (as amended) on the grounds of inconsistency with other provisions, etc see s 1(3), Sch 1 para 11(1); and para 307 ante.

11 *Ie* under *ibid* s 24(1): see the text and notes 1-10 supra.

12 *Ibid* s 24(2). See note 6 supra. As to magistrates' courts see MAGISTRATES. As to the procedure on applications to a magistrates' court see s 103(1); and para 422 post.

13 *Ie* under *ibid* s 8: see para 315 ante.

14 *Ibid* s 24(3).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

336 Provision of exits, etc

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 6--Now, head (3) premises in respect of which a club premises certificate has effect under the Licensing Act 2003 (see LICENSING AND GAMBLING vol 67 (2008) PARA 226): Building Act 1984 s 24(4)(c) (substituted by the 2003 Act Sch 6 para 91).

TEXT AND NOTES 9, 10--References to the fire authority are now to the fire and rescue authority: 1984 Act ss 24(1), 126 (amended by the Fire and Rescue Services Act 2004 Sch 1 para 57).

NOTE 9--1971 Act replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(5) PLANS AND NOTICES/ (ii) Passing or Rejection of Plans and Imposition of Conditions/337. Provision of water supply.

337. Provision of water supply.

Where plans¹ of a house² are, in accordance with building regulations³, deposited⁴ with a local authority⁵, the authority must reject the plans⁶ unless a proposal is put before it that appears to it to be satisfactory for providing the occupants of the house with a supply of wholesome water sufficient for their domestic purposes:

158 (1) by connecting the house to a supply of water in pipes provided by water undertakers⁷;

159 (2) if in all the circumstances it is not reasonable to require the house to be connected, by otherwise taking water into the house by means of a pipe⁸; or

160 (3) if in all the circumstances neither of the preceding alternatives can reasonably be required, by providing a supply of water within a reasonable distance of the house⁹,

and the authority is satisfied that the proposal can and will be carried into effect¹⁰.

Any question arising¹¹ between a local authority and the person by whom, or on whose behalf, plans are deposited as to whether the local authority ought to pass the plans may on the application of that person be determined by a magistrates' court¹². If, after any such plans have been passed, it appears to the local authority that the proposal for providing a supply of water has not been carried into effect, or has not resulted in a supply of wholesome water sufficient for the domestic purposes of the occupants, the authority must give notice to the owner¹³ of the house prohibiting him from occupying it, or permitting it to be occupied, until the authority, being satisfied that such a supply has been provided, has granted him a certificate to that effect¹⁴. Until a certificate is so granted, the owner must not occupy the house or permit it to be occupied¹⁵. A person aggrieved¹⁶ by the refusal of the authority to grant such a certificate may apply to a magistrates' court for an order authorising the occupation of the house, and, if the court is of opinion that a certificate ought to have been granted, the court may make an order authorising the occupation of the house, and such an order has the like effect as a certificate of the local authority¹⁷.

1 As to the meaning of 'plans' see para 307 note 8 ante.

2 For the meaning of 'house' see para 313 note 10 ante.

3 For the meaning of 'building regulations' see para 306 ante.

4 As to references to the deposit of plans in accordance with building regulations see para 319 note 18 ante.

5 For the meaning of 'local authority' see para 301 note 12 ante.

6 As to the notice of rejection see the Building Act 1984 s 16(6), (7); and para 329 ante.

7 Ibid s 25(1)(a) (amended by the Water Act 1989 s 190, Sch 27 Pt I). The provisions of the Building Act 1984 s 25 do not apply to inner London: Sch 3 para 1. For the meaning of 'inner London' see para 303 note 10 ante. As to the making of building regulations to modify or repeal the provisions of s 25 (as amended) on the grounds of inconsistency with other provisions, etc see s 1(3), Sch 1 para 11(1); and para 307 ante.

The Water Industry Act 1991 s 67 (standards of wholesomeness of water) (see WATER AND WATERWAYS vol 100 (2009) PARA 373) and any regulations made under s 67 apply for the purposes of the Building Act 1984 s 25(1)

(as amended) as they apply for the purposes of the Water Industry Act 1991 Pt III Ch III (ss 67-86A) (as amended) (see WATER AND WATERWAYS): Building Act 1984 s 25(7) (added by the Water Act 1989 s 190, Sch 25 para 70; and amended by the Water Consolidation (Consequential Provisions) Act 1991 s 2, Sch 1 para 39(1), (3)).

8 Building Act 1984 s 25(1)(b).

9 Ibid s 25(1)(c).

10 Ibid s 25(1).

11 Ie under ibid s 25(1) (as amended): see the text and notes 1-10 supra.

12 Ibid s 25(2). As to magistrates' courts see MAGISTRATES. As to the procedure on applications to a magistrates' court see s 103(1); and para 422 post.

13 For the meaning of 'owner' see para 310 note 2 ante.

14 Building Act 1984 s 25(3).

15 Ibid s 25(4). A person who contravenes s 25(4) is liable on summary conviction to a fine not exceeding level 1 on the standard scale and to a further fine not exceeding £2 for each day on which the offence continues after he is convicted: s 25(6). As to the standard scale see para 313 note 7 ante. As to the meaning of 'contravene' see para 310 note 10 ante. As to continuing offences see para 427 post.

16 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARA 656.

17 Building Act 1984 s 25(5).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(5) PLANS AND NOTICES/(iii) Proposed Departure from Plans/338. Proposed departure from plans.

(iii) Proposed Departure from Plans

338. Proposed departure from plans.

As from a day to be appointed the following provisions have effect¹. Where plans² of any proposed work have been passed³ by a local authority⁴, the person by or on whose behalf the plans were in accordance with building regulations⁵ deposited⁶ with the authority may (and in such cases as may be prescribed⁷ must) for the purpose of obtaining the approval of the authority to any proposed departure or deviation from the plans as passed, deposit plans of the departure or deviation⁸.

1 In so far as the Building Act 1984 s 31 enables regulations to be made, it came into force on 1 December 1984 by virtue of s 134(2) (as amended). At the date at which this volume states the law no order bringing s 31 into force for remaining purposes had been made.

2 As to the meaning of 'plans' see para 307 note 8 ante.

3 Ie under the Building Act 1984 s 16 (as amended): see para 329 ante.

4 For the meaning of 'local authority' see para 301 note 12 ante.

5 For the meaning of 'building regulations' see para 306 ante.

6 As to references to the deposit of plans in accordance with building regulations see para 319 note 18 ante.

7 Ie prescribed by building regulations: see the Building Act 1984 s 126.

8 Ibid s 31(1) (not yet in force: see note 1 supra). Section 16 (as amended) (see para 329 ante) applies in relation to plans deposited under s 31(1) as it applies in relation to the plans originally deposited: s 31(2) (not yet in force: see note 1 supra).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(5) PLANS AND NOTICES/(iv) Lapse of Deposit of Plans/339. Lapse of deposit of plans.

(iv) Lapse of Deposit of Plans

339. Lapse of deposit of plans.

Where plans¹ of any proposed work have, in accordance with building regulations², been deposited³ with a local authority⁴, and the plans have been passed⁵ by the authority, or notice of rejection⁶ of the plans has not been given within the relevant period⁷ from their deposit, and the work to which the plans relate has not been commenced within three years from the deposit of the plans, the local authority may, at any time before the work is commenced, by notice to the person by whom or on whose behalf the plans were deposited, or to the owner⁸ for the time being of the land to which the plans relate, declare that the deposit of the plans is of no effect⁹.

Where such a notice has been given, the Building Act 1984 and the building regulations¹⁰, as respects the proposed work, have effect as if no plans had been deposited¹¹.

1 As to the meaning of 'plans' see para 307 note 8 ante.

2 For the meaning of 'building regulations' see para 306 ante.

3 As to references to the deposit of plans in accordance with building regulations see para 319 note 18 ante.

4 For the meaning of 'local authority' see para 301 note 12 ante.

5 As to notice that plans have been passed see the Building Act 1984 s 16(6), (8); and para 329 ante. As to the form, authorisation and service of notices see paras 418-420 post.

6 As to the requirement to give notice that plans have been rejected see *ibid* s 16(6), (7); and para 329 post.

7 For the meaning of 'the relevant period' see para 329 note 14 ante.

8 For the meaning of 'owner' see para 310 note 2 ante.

9 Building Act 1984 s 32(1). A plan showing several houses, some of which were built within the period, can be declared void as regards houses not commenced within the period: see *Harrogate Corpn v Dickinson* [1904] 1 KB 468, CA. See also *White v Sunderland Corpn* (1903) 88 LT 592, DC.

10 I.e. the Building Regulations 2000, SI 2000/2531 (as amended).

11 Building Act 1984 s 32(2).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(5) PLANS AND NOTICES/(v) Consultation with Sewerage Undertaker/340. Consultation with sewerage undertaker.

(v) Consultation with Sewerage Undertaker

340. Consultation with sewerage undertaker.

Where full plans¹ have been deposited with the local authority and requirements in relation to building over sewers are imposed² in relation to the building work³ which is the subject of those plans⁴, the local authority must consult the sewerage undertaker as soon as practicable after the plans have been deposited⁵, and before issuing⁶ any completion certificate in relation to the building work⁷. Where a local authority is so required to consult the sewerage undertaker it must:

- 161 (1) give to the sewerage undertaker, in a case where it is consulting it following the deposit of full plans, sufficient plans to show whether the work would, if carried out in accordance with those plans, comply with the applicable requirements⁸ relating to building over sewers⁹;
- 162 (2) have regard to any views expressed by the sewerage undertaker¹⁰; and
- 163 (3) not pass plans or issue a completion certificate until 15 days have elapsed from the date on which it consulted the sewerage undertaker, unless the sewerage undertaker has expressed its views to the local authority before the expiry of that period¹¹.

1 For the meaning of 'full plans' see para 323 note 5 ante.

2 Ie by the Building Regulations 2000, SI 2000/2531, reg 4, Sch 1 para H4 (as substituted): see para 308 ante.

3 For the meaning of 'building work' see para 308 ante.

4 Building Regulations 2000, SI 2000/2531, reg 14A(1) (reg 14A added by SI 2001/3335).

5 Building Regulations 2000, SI 2000/2531, reg 14A(2)(a) (as added: see note 4 supra).

6 Ie in accordance with ibid reg 17 (see para 327 ante) pursuant to a request under reg 14(5) (see para 325 ante).

7 Ibid reg 14A(2)(b) (as added: see note 4 supra).

8 Ie the requirements of ibid Sch 1 para H4 (as substituted): see para 308 ante.

9 Ibid reg 14A(3)(a) (as added: see note 4 supra).

10 Ibid reg 14A(3)(b) (as added: see note 4 supra).

11 Ibid reg 14A(3)(c) (as added: see note 4 supra).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(6) LOCAL AUTHORITY CHARGES/341. Local authority charges.

(6) LOCAL AUTHORITY CHARGES

341. Local authority charges.

Local authorities are authorised to fix by means of a scheme and to recover such charges as they may determine for or in connection with the performance the functions of theirs relating to building regulations¹. They are authorised, within a scheme, to make a charge for or in connection with:

- 164 (1) the passing or rejection by the local authority of plans of proposed building work (referred to as 'a plan charge')²;
- 165 (2) the inspection of building work for which plans have been deposited (referred to as 'an inspection charge')³;
- 166 (3) the consideration of a building notice which has been given to the local authority (referred to as 'a building notice charge')⁴;
- 167 (4) the consideration of building work reverting to local authority control (referred to as 'a reversion charge')⁵; and
- 168 (5) the consideration of an application in respect of unauthorised building work and the inspection of any building work to which that application relates (referred to as 'a regularisation charge')⁶.

Any plan charge, inspection charge, reversion charge, or building notice charge is payable by the person who carries out the building work, or on whose behalf the building work is carried out⁷. Any charge which is payable to the authority must be paid together with an amount equal to any value added tax payable in respect of that charge⁸. Part of any charge which is payable to the authority may, in a particular case, and with the agreement of the authority, be paid by instalments of such amounts payable on such dates as may be specified by the authority⁹.

The amount of the charges determined within a scheme by a local authority must be such that the income to be derived, or which it is reasonably expected will be derived, from them during the relevant period¹⁰ is not less than the costs¹¹ directly or indirectly incurred as determined in accordance with proper accounting practices¹² by that authority in performing its functions¹³ during that period; these are referred to as the 'proper costs'¹⁴. A local authority must, at the end of the financial year within which it makes a scheme and immediately after the end of each successive financial year, prepare a statement which sets out fully the scheme made by it and the amount of the income and the proper costs¹⁵.

Local authorities must determine the charges by relating each charge to the estimated cost of the building work and to other matters¹⁶. Where the estimated cost of the building work is below £5,000, a local authority may determine that an inspection charge is not payable¹⁷.

Provision is made in respect of the principles of the scheme in respect of: (a) the erection of one or more small domestic buildings¹⁸, certain garages, carports and extensions¹⁹; (b) reductions for repetitive building work or applications or notices for substantially the same work²⁰; and (c) building work solely required for disabled persons²¹. Further provision is made in respect of publicity for the scheme²², transitional provisions²³ and fees for the determinations of questions by the Secretary of State²⁴.

1 Building (Local Authority Charges) Regulations 1998, SI 1998/3129, reg 3(1). Local authorities are authorised to amend, revoke or replace any such scheme which has been made by them: reg 3(2). The provisions of the Building (Local Authority Charges) Regulations 1998, SI 1998/3129, are designated as provisions to which the Building Act 1984 s 35 (penalty for contravening building regulations) (see para 343 post) does not apply: Building (Local Authority Charges) Regulations 1998, SI 1998/3129, reg 13.

2 Ibid reg 4(1)(a). The plans referred to are those deposited in accordance with the Building Act 1984 s 16 (see para 329 ante). The sum of the plan charge must be equal to the building notice charge (see the text and note 4 infra): Building (Local Authority Charges) Regulations 1998, SI 1998/3129, reg 4(2). A scheme must provide that any plan charge is payable when plans of the building work are deposited with the authority: reg 10(1)(a). Where a plan charge has been paid and not refunded, the authority may, in any case it considers reasonable, decide not to make a further plan charge in respect of plans subsequently deposited for substantially the same building work: reg 10(1)(h). Where for any reason an authority does not give notice of passing or rejection of plans within the period required by the Building Act 1984 s 16 (see para 329 ante), it must refund any plan charge paid: Building (Local Authority Charges) Regulations 1998, SI 1998/3129, reg 10(1)(i). Plans which are deposited otherwise than in accordance with a requirement imposed under reg 10(1)(a) are not deposited in accordance with building regulations for the purposes of the Building Act 1984 s 16 (see para 329 ante): Building (Local Authority Charges) Regulations 1998, SI 1998/3129, reg 10(2). A scheme must provide that no later than the time when plans are deposited with the local authority, it ought, except in the case of building work described in reg 7(1) (see the text to note 19 infra), to have received a written estimate of the cost of the building work: reg 11(1). For these purposes, 'estimate' in relation to the cost of carrying out building work, means an estimate, accepted by the local authority, of such reasonable amount as would be charged for the carrying out of that building work by a person in business to carry out such building work (excluding the amount of any value added tax chargeable), and references to 'estimated cost' must be construed accordingly: reg 2(1). For the meaning of 'building work' see para 308 ante; definition applied by reg 2(1).

3 Ibid reg 4(1)(b). The plans referred to are those deposited in accordance with the Building Regulations 2000, SI 2000/2531 (as amended), and with the Building Act 1984 s 16 (see para 329 ante): Building (Local Authority Charges) Regulations 1998, SI 1998/3129, reg 4(1)(b). The sum of the inspection charge must be equal to the building notice charge (see the text and note 4 infra): reg 4(2). A scheme must provide that any inspection charge is payable on demand made after the authority carries out the first inspection in respect of which the charge is payable: reg 10(1)(b).

4 Ibid reg 4(1)(c). The building notices referred to are those given to the local authority in accordance with the Building Regulations 2000, SI 2000/2531 (as amended) (see paras 323-324 ante): Building (Local Authority Charges) Regulations 1998, SI 1998/3129, reg 2(1). A scheme must provide that any building notice charge is payable when the building notice is given to the authority: reg 10(1)(c). A building notice given otherwise than in accordance with a requirement imposed under reg 10(1)(c) is not validly given for the purposes of the Building Regulations 2000, SI 2000/2531 (as amended): Building (Local Authority Charges) Regulations 1998, SI 1998/3129, reg 10(2). A scheme must provide that no later than the time when a building notice is given to the local authority, it ought, except in the case of building work described in reg 7(1) (see the text to note 19 infra), to have received a written estimate of the cost of the building work: reg 11(1).

5 Ibid reg 4(1)(d). The reversion charge must be equal to the building notice charge (see the text and note 4 supra): reg 4(3). A scheme must provide that any reversion charge is payable for building work in relation to a building which has been substantially completed before plans are first deposited with the authority in accordance with the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 20(2)(a)(i) (see para 364 post), or in respect of which plans for further building work have been deposited with the authority in accordance with reg 20(3) (see para 364 post) on the first occasion on which those plans have been deposited: Building (Local Authority Charges) Regulations 1998, SI 1998/3129, reg 10(1)(d). A scheme must also provide that where building work of a kind not described in reg 7(1) (see the text to note 19 infra) and in respect of which a reversion charge is payable, reverts to local authority control, any plans relating to that building work given to the authority in accordance with the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 20 (see para 364 post) must be accompanied by a current estimate in writing of the cost of that building work: Building (Local Authority Charges) Regulations 1998, SI 1998/3129, reg 11(2).

6 Ibid reg 4(1)(e). The application referred to in the text is one made under the Building Regulations 2000, SI 2000/2531, reg 21 (see para 353 post): Building (Local Authority Charges) Regulations 1998, SI 1998/3129, reg 4(1)(e). The regularisation charge must be 20% greater than the building notice charge (see the text and note 4 supra): reg 4(4). Any regularisation charge is to be payable by the owner of the building: reg 10(1)(j). A scheme must provide that any regularisation charge is payable at the time of the application to the authority in accordance with the Building Regulations 2000, SI 2000/2531, reg 21 (see para 353 post): Building (Local Authority Charges) Regulations 1998, SI 1998/3129, reg 10(1)(e).

7 Ibid reg 10(1)(j).

8 Ibid reg 10(1)(f). As to value added tax generally see VALUE ADDED TAX.

9 Ibid reg 10(1)(g) (which is expressed to be notwithstanding reg 10(1)(a)-(e) (see notes 2-6 supra)). Plans which are deposited otherwise than in accordance with an agreement under reg 10(1)(g) are not deposited in accordance with building regulations for the purposes of the Building Act 1984 s 16 (see para 329 ante): Building (Local Authority Charges) Regulations 1998, SI 1998/3129, reg 10(2). A building notice given otherwise than in accordance with an agreement under reg 10(1)(g) is not validly given for the purposes of the Building Regulations 2000, SI 2000/2531 (as amended): Building (Local Authority Charges) Regulations 1998, SI 1998/3129, reg 10(2).

10 For these purposes, 'relevant period' means a continuous period of three years commencing with the date on which a scheme comes into force (whether or not it is replaced by a further scheme during that period) in which the local authority fixes the amount of the charges mentioned in ibid reg 5(1): reg 5(5).

11 For these purposes, 'cost' does not include any professional fees paid to an architect, quantity surveyor or any other person: ibid reg 2(1).

12 For these purposes, 'proper accounting practices' has the same meaning as in the Local Government and Housing Act 1989 s 66(4), (5) (see LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 560): Building (Local Authority Charges) Regulations 1998, SI 1998/3129, reg 5(1).

13 In its functions under the Building Regulations 2000, SI 2000/2531 (as amended).

14 Building (Local Authority Charges) Regulations 1998, SI 1998/3129, reg 5(1). Where the proper costs for building regulations control functions for a local authority do not exceed £450,000 for the relevant period, or where at least 65% of all charges received by it over the relevant period relate to charges arising under reg 7 (see the text and note 19 infra) (excluding charges arising under reg 7(1)(a)), the income derived may be less than the income referred to in reg 5(1), but must not be less than 90% of the costs to the local authority of performing its functions under the Building Regulations 2000, SI 2000/2531 (as amended): Building (Local Authority Charges) Regulations 1998, SI 1998/3129, reg 5(2). In calculating the amount of the proper costs, a local authority must not include in the sum of those costs any costs which it incurs as a result of the performance of its functions relating to building regulations which relate to building work required solely for disabled persons as defined by reg 9 (see note 21 infra): reg 5(3). Before determining the amount of any charge mentioned in reg 5(1), a local authority must on the best information estimate a reasonable amount which represents the aggregate of the proper costs during the relevant period: reg 5(4).

15 Ibid reg 5(6).

16 Ibid reg 6(1). The other matters referred to in the text are either or both of: (1) the existing use of a building, or the proposed use of the building after completion of the building works; or (2) whether the building work is in respect of the construction of a new building, or an alteration or extension to an existing building: reg 6(2). For the meaning of 'building' see para 305 ante; definition applied by reg 2(1). As to the establishment of the basis on which charges must be made where the building work comprises the installation of cavity fill insulation or the installation of an unvented hot water system see reg 6(4), (5).

17 Ibid reg 6(3).

18 For these purposes, 'small domestic building' means a building, including connected drainage work within the curtilage of that building: (1) which is used or intended to be used wholly for the purposes of one or more dwellings, none of which has a floor area exceeding 300m², excluding any garage or carport; (2) the whole of which is (a) shown on plans deposited for the purposes of the Building Act 1984 s 16 (see para 329 ante); (b) shown on plans accompanying a building notice; or (c) shown on plans given to a local authority in accordance with the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 20 (see para 364 post); (3) which has no more than three storeys, each basement level being counted as one storey, including such a building which incorporates an integral garage or to which is attached a garage or carport or both which shares one or more walls with that building: Building (Local Authority Charges) Regulations 1998, SI 1998/3129, reg 2(1). For these purposes, (i) the floor area of any storey of a dwelling or extension, or a garage or carport, is the total floor area calculated by reference to the finished internal faces of the walls enclosing the area, or, if at any point there is no enclosing wall, by reference to the outermost edge of the floor; (ii) the total floor area of any dwelling is the total of the floor area of all the storeys which comprise that dwelling; and (iii) the total floor area of an extension of a dwelling is the total of the floor areas of all the storeys in the extension: reg 2(2). 'Carport' means a building forming a shelter for a vehicle, open on at least two sides: reg 2(1). For the meaning of 'dwelling' see para 308 note 24 ante; definition applied by reg 2(1). 'Extension' means an extension which has no more than three storeys, each basement level, if any, counting as one storey: reg 2(1).

19 See ibid reg 7.

20 See ibid reg 8.

21 See *ibid* reg 9(1), (2). For these purposes, 'disabled person' means a person who is within any of the descriptions of persons to whom the National Assistance Act 1948 s 29(1) (see SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) para 1020) applied, as that section was extended by virtue of the Mental Health Act 1959 s 8(2), but not taking into account amendments made to the National Assistance Act 1948 s 29(1) by the Children Act 1989 Sch 13 para 11: Building (Local Authority Charges) Regulations 1998, SI 1998/3129, reg 9(3).

22 See *ibid* reg 12.

23 See *ibid* reg 14.

24 See *ibid* reg 15.

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

341 Local authority charges

NOTE 12--SI 1998/3129 reg 5(1) amended: SI 2004/533.

NOTE 21--1959 Act s 8(2) amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 23(a).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(7) BREACH OF BUILDING REGULATIONS/342. Tests for conformity with building regulations.

(7) BREACH OF BUILDING REGULATIONS

342. Tests for conformity with building regulations.

As from a day to be appointed, the following provisions have effect¹. For the purpose of enabling a local authority² to ascertain, as regards any work or proposed work to which building regulations³ for the enforcement of which it is responsible are applicable, whether any provision of building regulations is or would be contravened⁴ by, or by anything done or proposed to be done in connection with, that work⁵, the local authority has power:

- 169 (1) to require a person by whom or on whose behalf the work was, is being or is NOTE 1--1948 Act s 2(4) further amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 11. proposed to be done to carry out such reasonable tests of or in connection with the work as may be specified in the requirement⁶; or
- 170 (2) itself to carry out any reasonable tests of or in connection with the work, and to take any samples necessary to enable it to carry out such a test⁷.

The matters with respect to which tests may be required or carried out under head (1) or head (2) above include tests of the soil or subsoil of the site of a building⁸, and tests of any material, component or combination of components that has been, is being or is proposed to be used in the construction⁹ of a building, and tests of any service, fitting or equipment that has been, is being or is proposed to be provided in or in connection with a building¹⁰.

A local authority has power, for the purpose of ascertaining whether there is or has been, in the case of a building, a contravention of a continuing requirement¹¹ that applies in relation to that building to require the owner¹² or occupier of the building to carry out such reasonable tests as may be specified in the continuing requirement¹³, or itself to carry out any such tests, and to take any samples necessary to enable it to carry out such a test¹⁴.

The expense of carrying out any tests that a person is required to carry out¹⁵ must be met by that person, except that the local authority, on an application made to it, may, if it thinks it reasonable to do so, direct that the expense of carrying out any such tests, or such part of that expense as may be specified in the direction, is to be met by the local authority¹⁶. Any question arising between a local authority and a person as to the reasonableness of:

- 171 (a) a test specified in a requirement imposed on him by the authority¹⁷;
- 172 (b) a refusal by the authority to give a direction on an application made by him¹⁸;
- or
- 173 (c) a direction given on such an application¹⁹,

may on the application of that person be determined by a magistrates' court²⁰. In a case falling within head (b) or head (c) above the court may order the expense to which the application relates to be met by the local authority to such extent as the court thinks just²¹.

1 The Building Act 1984 s 33 is to be brought into force by order made by the Secretary of State under s 134(1)(b) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the

Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

- 2 For the meaning of 'local authority' see para 301 note 12 ante.
- 3 For the meaning of 'building regulations' see para 306 ante.
- 4 As to the meaning of 'contravention' see para 310 note 10 ante.
- 5 Building Act 1984 s 33(1) (not yet in force: see note 1 supra).
- 6 Ibid s 33(2)(a) (not yet in force: see note 1 supra).
- 7 Ibid s 33(2)(b) (not yet in force: see note 1 supra).
- 8 Ibid s 33(3)(a) (not yet in force: see note 1 supra). For the meaning of 'building' see para 305 ante.
- 9 For the meaning of 'construct' see para 307 note 3 ante.
- 10 Building Act 1984 s 33(3)(b) (not yet in force: see note 1 supra).
- 11 For these purposes, 'continuing requirement' means a continuing requirement imposed by building regulations made by virtue of *ibid* s 2(1) or s 2(2) (see para 310 ante): s 33(4) (not yet in force: see note 1 supra).
- 12 For the meaning of 'owner' see para 310 note 2 ante.
- 13 Building Act 1984 s 33(4)(a) (not yet in force: see note 1 supra).
- 14 Ibid s 33(4)(b) (not yet in force: see note 1 supra).
- 15 *Ie* under *ibid* s 33 (not yet in force).
- 16 Ibid s 33(5) (not yet in force: see note 1 supra).
- 17 Ibid s 33(6)(a) (not yet in force: see note 1 supra).
- 18 Ibid s 33(6)(b) (not yet in force: see note 1 supra).
- 19 Ibid s 33(6)(c) (not yet in force: see note 1 supra).
- 20 Ibid s 33(6) (not yet in force: see note 1 supra). As to magistrates' courts see *MAGISTRATES*. As to the procedure on applications to a magistrates' court see s 103(1); and para 422 post.
- 21 Ibid s 33(6) (not yet in force: see note 1 supra).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see *ADMINISTRATIVE LAW* vol 1(1) (2001 Reissue) *PARA* 196A.

342 Tests for conformity with building regulations

NOTE 11--Reference to the 1984 Act s 2(2) is now to s 2(2) or 2A (see *PARA* 310): s 33(4) (amended by the Sustainable and Secure Buildings Act 2004 s 4(2)).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(7) BREACH OF BUILDING REGULATIONS/343. Contravention of building regulations.

343. Contravention of building regulations.

Generally, if a person contravenes¹ any provision contained in building regulations², he is liable on summary conviction to a fine³ and also to a further fine for each day on which the default continues after he is convicted⁴. Certain provisions of building regulations have been designated as ones to which this general rule does not apply⁵.

1 For the meaning of 'contravene' see para 310 note 10 ante.

2 For the meaning of 'building regulations' see para 306 ante.

3 The fine imposed is one not exceeding level 5 on the standard scale: Building Act 1984 s 35. As to the standard scale see para 313 note 7 ante. An offence is committed when the works are completed in a way which does not comply with the relevant requirements of the regulations: *Torrige District Council v Turner* (1991) 59 BLR 31, (1991) 90 LGR 173, DC. The burden of showing non compliance with the building regulations lies initially with the local authority. However, where it is established that the work did not comply with the approved document, the burden will be on the builder to show compliance with the regulations: *Rickards and Rickards v Kerrier District Council* (1987) 151 JP 625. The offence of non compliance with the building regulations arises once and for all when the period for compliance expired: *Hertsmere Borough Council v Alan Dunn Building Contractors* [1985] Crim LR 726, 84 LGR 214, DC. A director of a company which owns a building to which structural alterations have been carried out is necessarily liable for failure to comply with the regulations: *Fuller v Nicholas* (1984) Times, 18 April.

4 Building Act 1984 s 35. The fine imposed must not exceed £50 for each day on which the default continues after conviction: see s 35. As to continuing offences see para 427 post. It appears that a person who has deposited plans and given notices as required by the regulations may commence building (otherwise than in contravention of the regulations) without waiting for approval of the plans: see *R v Tynemouth RDC* [1896] 2 QB 451, CA, although this case was decided in the context of building byelaws. However, if such a person in so acting deviates from the deposited plans to a material extent, such action is likely to constitute an offence: see *Burton v Acton* (1887) 51 JP 566, DC; *James v Masters* [1893] 1 QB 355, DC. See also *Masters v Pontypool Local Government Board* (1878) 9 Ch D 677. All these are byelaw cases, but the principle appears to stand. It has also been held, under building byelaws, that a penalty cannot be recovered if the local authority fails to give notice of disapproval of the plans within the prescribed period and the building is thereafter commenced: *Clark v Bloomfield* (1885) 1 TLR 323, DC; and see *Masters v Pontypool Local Government Board* supra. See also *Investors in Industry Commercial Properties Ltd v South Bedfordshire DC (Ellison & Partners (a firm), third parties)* [1986] QB 1034, [1986] 1 All ER 787, CA.

5 The provisions which have been so designated are the Building Regulations 2000, SI 2000/2531, reg 17 (completion certificates) (see para 327 ante) (see reg 22); the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532 (as amended) (see para 329 et seq ante) (apart from reg 12 (energy rating) (see para 369 post) and reg 20 (local authority powers in relation to partly completed work) (see para 364 post) (see reg 31); and the Building (Local Authority Charges) Regulations 1998, SI 1998/3129 (see para 341 ante) (see reg 13).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

343 Contravention of building regulations

TEXT AND NOTES--Despite anything in the Magistrates' Courts Act 1980 s 127(1) (see MAGISTRATES vol 29(2) (Reissue) PARA 589), an information relating to an offence under the Building Act 1984 s 35 may be tried by a magistrates' court if it is laid at any time (1) within the period of two years beginning with the day on which the offence was committed, and (2) within the period of six months beginning with the relevant date: Building Act 1984 s 35A(1) (s 35A added by the Climate Change and Sustainable Energy Act 2006 s 13(1); and amended by the Housing and Regeneration Act 2008 s 317, Sch 16). 'The relevant date' means the date on which evidence sufficient to justify the proceedings comes to the knowledge of the person commencing the proceedings: 1984 Act s 35A(4) (s 35A as so added). In the case of proceedings commenced by a local authority (a) evidence is to be regarded for the purposes of s 35A(4) as sufficient to justify the proceedings if in the opinion of the proper officer or an authorised officer it is sufficient to justify the proceedings; and (b) a certificate of the proper officer or, as the case may be, that authorised officer as to the date on which evidence which, in his opinion, was sufficient to justify the proceedings came to the knowledge of the person commencing the proceedings is to be conclusive evidence of that fact: s 35A(5) (s 35A as so added).

NOTE 5--The provisions which are now designated under SI 2000/2531 are regs 17, 17E, 20A, 20B, 20C and 20D: reg 22 (amended by SI 2006/652). The only provision now designated under SI 2000/2532 reg 31 is reg 20: reg 31 (amended by SI 2006/3318).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(7) BREACH OF BUILDING REGULATIONS/344. Removal or alteration of offending work.

344. Removal or alteration of offending work.

If any work to which building regulations¹ are applicable contravenes² any of those regulations, the local authority³, without prejudice to its right to take proceedings for a fine in respect of the contravention, may by notice require the owner⁴ to pull down or remove the work⁵, or if he so elects, to effect such alterations in it as may be necessary to make it comply with the regulations⁶. If, in a case where the local authority is, by any provision of Part I of the Building Act 1984⁷, expressly required or authorised to reject plans⁸, any work to which building regulations are applicable is executed:

- 174 (1) without plans having been deposited⁹;
- 175 (2) notwithstanding the rejection of the plans¹⁰; or
- 176 (3) otherwise than in accordance with any requirements subject to which the authority passed the plans¹¹,

the authority may by notice to the owner require him to pull down or remove the work¹², or require him either to pull down or remove the work or, if he so elects, to comply with any other requirements specified in the notice, being requirements that it might have made under the provision in question as a condition of passing plans¹³.

A notice to remove or alter work contravening building regulations¹⁴ must not be given after the expiration of 12 months from the date of the completion of the work in question¹⁵. If a person to whom such a notice has been given fails to comply with the notice before the expiration of 28 days, or such longer period as a magistrates' court¹⁶ may on his application allow, the local authority may pull down or remove the work in question, or effect such alterations in it as it deems necessary, and may recover from him the expenses reasonably incurred by it in doing so¹⁷.

A notice to remove or alter work contravening building regulations¹⁸ must not be given, in a case where plans were deposited and the work was shown on them, on the ground that the work contravenes any building regulations or, as the case may be, does not comply with the authority's requirements under any provision of Part I of the Building Act 1984¹⁹, if the plans were passed by the authority, or notice of their rejection was not given within the relevant period²⁰ from their deposit, and if the work has been executed in accordance with the plans and any requirement made by the local authority as a condition of passing the plans²¹.

The provisions described above do not affect the right of a local authority, the Attorney General²² or any other person to apply for an injunction for the removal or alteration of any work on the ground that it contravenes any regulation or any provision of the Building Act 1984²³. However, if:

- 177 (a) the work is one in respect of which plans were deposited²⁴;
- 178 (b) the plans were passed by the local authority, or notice of their rejection was not given within the relevant period from their deposit²⁵; and
- 179 (c) the work has been executed in accordance with the plans²⁶,

the court on granting an injunction has power to order the local authority to pay to the owner of the work such compensation as the court thinks just, but before making any such order the

court must in accordance with rules of court cause the local authority, if not a party to the proceedings, to be joined as a party to them²⁷.

1 For the meaning of 'building regulations' see para 306 ante.

2 For the meaning of 'contravene' see para 310 note 10 ante.

3 For the meaning of 'local authority' see para 301 note 12 ante.

4 For the meaning of 'owner' see para 310 note 2 ante.

5 Building Act 1984 s 36(1)(a).

6 Ibid s 36(1)(b). A notice under s 36 can be validly served on a person carrying out works who had not made an application for building regulation approval: *Parlett v Kerrier District Council* CO/770/96.

7 Ie any section of the Building Act 1984 Pt I (ss 1-46) (as amended) (partially in force) (see para 306 et seq ante) other than s 16 (see para 329 ante): see s 36(2).

8 As to the meaning of 'plans' see para 307 note 8 ante.

9 Building Act 1984 s 36(2)(a).

10 Ibid s 36(2)(b).

11 Ibid s 36(2)(c).

12 Ibid s 36(2)(i).

13 Ibid s 36(2)(ii).

14 Ie given under ibid s 36(1), (2): see the text and notes 1-13 supra.

15 Ibid s 36(4). In any case where s 53 (as amended) (see para 363 post) applies, the reference in s 36(4) to the date of the completion of the work in question has effect, in relation to a notice under s 36(1), as if it were a reference to the date on which the initial notice ceased to be in force: s 53(5).

16 See generally MAGISTRATES. As to the procedure on applications to a magistrates' court see ibid s 103(1); and para 422 post.

17 Ibid s 36(3). The local authority must first give notice of its intention to pull down the work or make alterations and give the owner an opportunity to be heard: *Cooper v Wandsworth District Board of Works* (1863) 14 CBNS 180; *Masters v Pontypool Local Government Board* (1878) 9 Ch D 677; approved and followed in *Hopkins v Smethwick Local Board of Health* (1890) 24 QBD 712, CA. See also *A-G v Hooper* [1893] 3 Ch 483; *Andrews v Wirral RDC* [1916] 1 KB 863, CA. In *Hopkins v Smethwick Local Board of Health* supra, no such notice was given, although notice had been given requiring the owner to remove the buildings. A building may be pulled down in any way consistent with safety: *Jagger v Doncaster Union Rural Sanitary Authority* (1890) 54 JP 438.

18 Ie given under the Building Act 1984 s 36(1), (2): see the text and notes 1-13 supra.

19 Ie other than ibid s 16: see para 329 ante.

20 For the meaning of 'the relevant period' see para 329 note 14 ante.

21 Building Act 1984 s 36(5).

22 As to the Attorney General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 529.

23 Building Act 1984 s 36(6). See *A-G v Ashborne Recreation Ground Co* [1903] 1 Ch 101.

24 Building Act 1984 s 36(6)(a).

25 Ibid s 36(6)(b).

26 Ibid s 36(6)(c).

27 Ibid s 36(6).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

344 Removal or alteration of offending work

NOTE 15--See *R (on the application of Bello) v Lewisham LBC* [2002] EWHC 1332 (Admin), [2002] EHLR 376 (delay between notice and enforcement did not render decision to enforce unreasonable).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(7) BREACH OF BUILDING REGULATIONS/345. Obtaining of report where a notice to remove or alter work contravening building regulations is given.

345. Obtaining of report where a notice to remove or alter work contravening building regulations is given.

In a case where:

- 180 (1) a person to whom a notice to remove or alter work contravening building regulations¹ has been given gives to the local authority² by whom the notice was given notice of his intention to obtain from a suitably qualified person a written report concerning work to which the notice relates³; and
- 181 (2) such a report is obtained and submitted to the local authority and, as a result of its consideration of it, the local authority withdraws the notice to remove or alter work contravening building regulations⁴,

the local authority may pay to the person to whom the notice was given such amount as appears to it to represent the expenses reasonably incurred by him in consequence of its having given him that notice including, in particular, his expenses in obtaining the report⁵.

1 le given under the Building Act 1984 s 36(1), (2): see para 344 ante.

2 For the meaning of 'local authority' see para 301 note 12 ante.

3 Building Act 1984 s 37(1)(a). If a person to whom such a notice has been given gives notice under s 37(1)(a), then, so far as regards the matters to which the notice relates, the reference to 28 days in s 36(3) (see para 344 ante) must be construed as a reference to 70 days: s 37(2). Notice under s 37(1)(a) must be given before the expiry of the period of 28 days referred to in s 36(3), or, as the case may be, within such longer period as a court allows under s 36(3), and, where such a longer period has been so allowed before notice is given under s 37(1)(a), then s 37(2) does not apply: s 37(3).

4 Ibid s 37(1)(b).

5 Ibid s 37(1).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(7) BREACH OF BUILDING REGULATIONS/346. Civil liability for breach of duties imposed by building regulations.

346. Civil liability for breach of duties imposed by building regulations.

As from a day to be appointed, the following provisions have effect¹. Breach of a duty imposed by building regulations², so far as it causes damage³, is actionable, except in so far as the regulations provide otherwise⁴. As regards such a duty, building regulations may provide for a prescribed⁵ defence to be available in a claim⁶ for breach of that duty⁷.

These provisions do not affect the extent, if any, to which breach of a duty imposed by or arising in connection with Part I of the Building Act 1984⁸ or any other enactment⁹ relating to building regulations, or a duty imposed by building regulations in a case to which these provisions do not apply, is actionable¹⁰, or prejudice a right of action that exists apart from the enactments relating to building regulations¹¹.

1 In so far as the Building Act 1984 s 38 enables regulations to be made, it came into force on 1 December 1984 by virtue of s 134(2) (as amended). At the date at which this volume states the law, no order bringing s 38 into force for remaining purposes had been made by the Secretary of State under s 134(1) (as amended). As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

2 For the meaning of 'building regulations' see para 306 ante.

3 For these purposes, 'damage' includes the death of, or injury to, any person, including any disease and any impairment of a person's physical or mental condition: Building Act 1984 s 38(4) (not yet in force: see note 1 supra).

4 Ibid s 38(1)(a) (not yet in force: see note 1 supra). The provisions of s 38(1) (not yet in force), and any defence provided for in regulations made by of s 38(1), do not apply in the case of a breach of such a duty in connection with a building erected before the date on which s 38(1) comes into force unless the regulations imposing the duty apply to or in connection with the building by virtue of s 2(2) (see para 310 ante) or s 1(3), Sch 1 para 8 (see para 307 ante): s 38(2) (not yet in force: see note 1 supra). For the meaning of 'building' see para 305 ante. For the meaning of 'erect' see para 307 note 3 ante. The defence *volenti non fit injuria* (see NEGLIGENCE vol 78 (2010) PARA 69 et seq) is not applicable to actions for breach of statutory duty: *Britton v Great Western Cotton Co* (1872) LR 7 Exch 130; *Baddeley v Earl Granville* (1887) 19 QBD 423; *Davies v Thomas Owen & Co Ltd* [1919] 2 KB 39; *Wheeler v New Merton Board Mills Ltd* [1933] 2 KB 669, CA.

A building owner has an overriding obligation to ensure that the building works comply with the building regulations and the local authority owes him no duty of care in passing plans: *Richardson v West Lindsey District Council* [1990] 1 All ER 296, [1990] 1 WLR 522, CA. A local authority when carrying out its building control functions owes a limited duty of care in tort which extends to owner occupiers and, in the absence of special circumstances, not even to them if they caused the building to be erected: *Peabody Donation Fund (Governors) v Sir Lindsay Parkinson & Co Ltd* [1985] AC 210, [1984] 3 All ER 529, HL; *Cynat Products Ltd v Landbuild (Investment and Property) Ltd* [1984] 3 All ER 513; *Fry v Robert A Jackson (Builder & Contractor) Ltd* (1986) 7 ConLR 97; *Investors in Industry Commercial Properties Ltd v South Bedfordshire District Council* [1986] QB 1034, [1986] 1 All ER 787, CA; *Hambro Life Assurance plc v White Young & Partners (a firm)* (1987) 38 BLR 16, (1987) 8 ConLR 130, CA.

5 Ie prescribed by building regulations: see the Building Act 1984 s 126.

6 Ie brought by virtue of ibid s 38 (not yet in force).

7 Ibid s 38(1)(b) (not yet in force: see note 1 supra). See note 4 supra.

8 Ie ibid Pt I (ss 1-46) (as amended) (partially in force): see para 306 et seq ante.

9 As to the meaning of 'enactment' see para 305 note 2 ante.

10 As to breach of statutory duty generally see TORT vol 97 (2010) PARA 495 et seq. The general rule is that a civil action for breach of statutory duty lies if the statutory obligation was intended to be for the protection of a class of persons of whom the plaintiff is one: see *Solomons v R Gertzenstein Ltd* [1954] 2 QB 243, [1954] 2 All ER 625, CA; *Grant v National Coal Board* [1956] AC 649, [1956] 1 All ER 682, HL. The claim must be in respect of injury or damage of a kind against which the statute was designed to give protection (*Gorris v Scott* (1874) LR 9 Exch 125; *Grant v National Coal Board* supra at 655 and 684 per Viscount Simonds), and the breach alleged must have caused or materially contributed to the injury or damage (*Bonnington Castings Ltd v Wardlaw* [1956] AC 613, [1956] 1 All ER 615, HL). The question whether the breach gives rise to a right of action depends on whether the intention of the statute considered as a whole and in the circumstances in which it was enacted was to impose a public duty only or to impose in addition a duty enforceable by an individual who has suffered damage or is otherwise aggrieved: *Phillips v Britannia Hygienic Laundry Co Ltd* [1923] 2 KB 832, CA; *Cutler v Wandsworth Stadium Ltd* [1949] 1 All ER 544, HL; *Solomon v R Gertzenstein Ltd* supra. Where a criminal remedy is provided for the breach there is a strong implication that no civil action lies: *Phillips v Britannia Hygienic Laundry Co Ltd* supra; *Clarke and Wife v Brims* [1947] KB 497, [1947] 1 All ER 242; *Cutler v Wandsworth Stadium Ltd* supra; *Ministry of Housing and Local Government v Sharp* [1970] 1 All ER 1009, CA. Regulations made by statutory instrument have the full force and effect of a statute whether or not the statute under which they were made provides that the regulations are to have effect as if enacted in the statute (*Dale's Case, Enraght's Case* (1881) 6 QBD 376 at 398, CA, per Lord Coleridge CJ; *Kruse v Johnson* [1898] 2 QB 91 at 96, DC, per Lord Russell of Killowen; *Re Macartney, Brookhouse v Barman* (1920) 36 TLR 394), and thus the law as to civil liability for breach of statutory duty extends to regulations.

11 Building Act 1984 s 38(3). As to the general common law duty of care, which may also give rise to liability in the case of a power (as distinct from a duty) where the exercise of the power was outside the ambit of the power see *Anns v Merton London Borough Council* [1978] AC 728 at 757-758, [1977] 2 All ER 492 at 503, HL, per Lord Wilberforce, and at 765-767 and 509-511 per Lord Salmon (departed from on the question of damages for pure economic loss by *Murphy v Brentwood District Council* [1991] 1 AC 398, [1990] 2 All ER 908, HL). See also *Geddis v Bann Reservoir Proprietors* (1878) 3 App Cas 430, HL; *East Suffolk Rivers Catchment Board v Kent* [1941] AC 74, [1940] 4 All ER 527, HL; *Home Office v Dorset Yacht Co Ltd* [1970] AC 1004, [1970] 2 All ER 294, HL; *Batty v Metropolitan Property Realisations Ltd* [1978] QB 554, [1978] 2 All ER 445, CA.

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

346 Civil liability for breach of duties imposed by building regulations

NOTE 4--1984 Act s 38(2) (amended by the Sustainable and Secure Buildings Act 2004 s 4(3) refers also to s 2A (see PARA 310).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(8) APPEALS IN RELATION TO BUILDING REGULATIONS/347. Appeal against refusal etc to relax building regulations.

(8) APPEALS IN RELATION TO BUILDING REGULATIONS

347. Appeal against refusal etc to relax building regulations.

If a local authority¹ refuses an application to dispense with or relax a requirement in building regulations² that it has power to dispense with or relax, the applicant may by notice³ in writing appeal to the Secretary of State within one month from the date on which the local authority notifies the applicant of its refusal⁴. If, within a period of two months beginning with the date of an application⁵, or such extended period as may at any time be agreed in writing between the applicant and the local authority⁶, the local authority does not notify the applicant of its decision on the application, the right to appeal⁷ to the Secretary of State applies in relation to the application as if the local authority had refused the application and notified the applicant of its decision at the end of that period⁸. The notice of appeal must set out the grounds of appeal, and a copy of the notice of appeal must be sent to the local authority⁹. The local authority, on receiving a copy of the notice of appeal, must at once transmit to the Secretary of State a copy of the application and a copy of all the documents furnished by the applicant for the purposes of his application¹⁰. The local authority must at the same time give to the Secretary of State in writing any representations that it desires to make as regards the appeal, and must send a copy to the appellant¹¹. If the Secretary of State allows the appeal, he must give such directions for dispensing with or relaxing building regulations as may be appropriate¹².

1 For the meaning of 'local authority' see para 301 note 12 ante.

2 For the meaning of 'building regulations' see para 306 ante. As to the power of the Secretary of State to give directions dispensing with or relaxing requirements in the building regulations see the Building Act 1984 s 8; and para 315 ante. Such a direction may relate to continuing requirements (see para 310 ante), and s 39 applies to any such direction: see s 2(6); and para 310 ante. As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

3 As to the form, authentication and service of notices see paras 418-420 post.

4 Building Act 1984 s 39(1).

5 Ibid s 39(2)(a).

6 Ibid s 39(2)(b).

7 Ie ibid s 39(1): see the text to notes 1-4 supra.

8 Ibid s 39(2).

9 Ibid s 39(3).

10 Ibid s 39(4).

11 Ibid s 39(5).

12 Ibid s 39(6).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(8) APPEALS IN RELATION TO BUILDING REGULATIONS/348. Appeal against notice to remove or alter work contravening building regulations.

348. Appeal against notice to remove or alter work contravening building regulations.

A person aggrieved¹ by the giving of a notice to remove or alter work contravening building regulations² may appeal to a magistrates' court acting for the petty sessions area³ in which is situated land on which there has been carried out any work to which the notice relates⁴. On such an appeal the court must, if it determines that the local authority⁵ was entitled to give the notice, confirm the notice⁶, and in any other case, give the local authority a direction to withdraw the notice⁷. Such an appeal must be brought within 28 days of the giving of the notice⁸, or, in a case where the person to whom the notice was given gives to the local authority notice⁹ of his intention to obtain from a suitable qualified person a written report concerning work to which the notice relates, within 70 days of the giving of the notice to remove or alter work contravening building regulations¹⁰.

Where an appeal is brought¹¹ the notice to remove or alter work contravening building regulations is of no effect pending the final determination or withdrawal of the appeal¹². If a person to whom a notice to remove or alter work contravening building regulations has been given fails to comply with the notice before the expiration of 28 days (beginning, in a case where an appeal is brought¹³, on the date when the appeal is finally determined or, as the case may be, withdrawn), or such longer period as a magistrates' court may on his application allow, the local authority may pull down or remove the work in question, or effect such alterations in it as it deems necessary, and may recover from him the expenses reasonably incurred by it in doing so¹⁴.

If, on such an appeal¹⁵ there is produced to the court a written report from a suitably qualified person concerning work to which the notice to remove or alter work contravening building regulations relates that has been submitted to the local authority¹⁶, the court, in making an order as to costs, may treat the expenses incurred in obtaining the report as expenses incurred for the purposes of the appeal¹⁷.

1 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARA 656.

2 I.e a notice under the Building Act 1984 s 36(1) or s 36(2): see para 344 ante.

3 As to appeals generally see paras 422-423 post. As to petty sessions areas see MAGISTRATES vol 29(2) (Reissue) para 591 et seq.

4 Building Act 1984 s 40(1).

5 For the meaning of 'local authority' see para 301 note 12 ante.

6 Building Act 1984 s 40(2)(a).

7 Ibid s 40(2)(b). If, in a case where the appeal is against a notice under s 36(2) (see para 344 ante), the court is satisfied that the local authority was entitled to give the notice, but in all the circumstances of the case the purpose for which was enacted the provision of the Building Act 1984 by virtue of which the notice was given has been substantially achieved, the court may give a direction under s 40(2)(b): s 40(3).

8 Ibid s 40(4)(a).

9 I.e under ibid s 37(1)(a): see para 345 ante.

10 Ibid s 40(4)(b).

- 11 Ie under ibid s 40.
- 12 Ibid s 40(5)(a).
- 13 Ie under ibid s 40.
- 14 Ibid ss 36(3), 40(5)(b).
- 15 Ie under ibid s 40.
- 16 Ie under ibid s 37(1): see para 345 ante.
- 17 Ibid s 40(6).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

348 Appeal against notice to remove or alter work contravening building regulations

TEXT AND NOTES 3, 4--Words 'acting ... relates' omitted: Building Act 1984 s 40(1) (amended by the Courts Act 2003 Sch 8 para 279, Sch 10).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(8) APPEALS IN RELATION TO BUILDING REGULATIONS/349. Appeal to the Crown Court.

349. Appeal to the Crown Court.

Where a person is aggrieved¹ by an order, determination or other decision of a magistrates' court² under Part I of the Building Act 1984³, or under Part IV⁴ of that Act as it applies in relation to Part I, and is not by any other enactment⁵ authorised to appeal to the Crown Court⁶, he may appeal to the Crown Court⁷. This does not confer a right of appeal in a case in which each of the parties concerned might under the Building Act 1984 have required that the dispute should be determined by arbitration instead of by a magistrates' court⁸.

1 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARA 656.

2 See MAGISTRATES.

3 Ie the Building Act 1984 Pt I (ss 1-46) (as amended) (partially in force): see para 306 et seq ante.

4 Ie ibid Pt IV (ss 91-131) (as amended): see para 352 et seq post.

5 As to the meaning of 'enactment' see para 305 note 2 ante.

6 See COURTS vol 10 (Reissue) para 621 et seq.

7 Building Act 1984 s 41(1).

8 Ibid s 41(2). As to arbitrations under the Building Act 1984 see para 333 note 16 ante.

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(8) APPEALS IN RELATION TO BUILDING REGULATIONS/350. Appeal and statement of case to the High Court in certain cases.

350. Appeal and statement of case to the High Court in certain cases.

As from a day to be appointed, the following provisions have effect¹. Where the Secretary of State gives a decision² in proceedings on certain appeals, references or applications³, the relevant person⁴ or the local authority or, as the case may be, the approved inspector⁵ may appeal to the High Court against the decision on a point of law⁶. At any stage of the proceedings on such an appeal, reference or application the Secretary of State may state a question of law arising in the course of the proceedings in the form of a special case for the decision of the High Court⁷, and a decision of the High Court on a case so stated is deemed to be a judgment of the court within the meaning of the Supreme Court Act 1981⁸.

In relation to such proceedings in the High Court or the Court of Appeal⁹, the power to make rules of court includes power to make rules prescribing the powers of the High Court or the Court of Appeal with respect to the remitting of the matter with the opinion or direction of the court for re-hearing and determination by the Secretary of State¹⁰, and providing for the Secretary of State, either generally or in such circumstances as may be prescribed by the rules, to be treated as a party to any such proceedings and to be entitled to appear and to be heard accordingly¹¹. No appeal to the Court of Appeal may be brought except with the leave of the High Court or the Court of Appeal¹².

1 The Building Act 1984 s 42(1)-(3) (see the text and notes 2-8 *infra*) is to be brought into force by order made by the Secretary of State under s 134(1)(b) as from a day to be appointed. At the date at which this volume states the law no such order had been made. Section 42(4)-(6) (see the text and notes 2, 9-12 *infra*), in so far as it enables regulations to be made, came in to force on 1 December 1984: see s 134(1)(a), (2). At the date at which this volume states the law no order had been made bringing s 42(4)-(6) into force for the remaining purposes. Section 42(7) (see the text and notes 3-4 *infra*) came into force on 1 December 1984: see s 134(2). As to the Secretary of State see para 301 note 3 *ante*. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 *ante*.

2 For these purposes, 'decision' includes a direction, and references to the giving of a decision must be construed accordingly: *ibid* s 42(6) (not yet in force: see note 1 *supra*).

3 On an appeal under *ibid* s 20 (as amended) (use of materials unsuitable for permanent building) (see para 332 *ante*) or s 39 (refusal to relax building regulations) (see para 347 *ante*), on a reference under s 16 (passing or rejection of plans) (see para 329 *ante*) or s 50 (as amended) (plans certificates) (see para 365 *post*), or on an application for a direction under s 8 (relaxation of building regulations) (see para 315 *ante*) where the power of giving the direction is not exercisable by the local authority: s 42(1)(a)-(c) (not yet in force: see note 1 *supra*). For the meaning of 'local authority' see para 301 note 12 *ante*.

Until a day to be appointed by order made by the Secretary of State, s 42(1) (not yet in force) has effect as modified by s 42(7): s 42(7)(a), (b). At the date at which this volume states the law no such day had been appointed. The power to make an order under s 42(7) is exercisable by statutory instrument, and different days may be appointed by such an order for different provisions or for different purposes: s 120(1).

4 For these purposes, 'the relevant person' means: (1) as regards an appeal under *ibid* s 20 (as amended) (see para 332 *ante*) or s 39 (see para 347 *ante*), the appellant (s 42(2)(a) (not yet in force: see note 1 *supra*)); (2) as regards a reference under s 16 (see para 329 *ante*) or s 50 (as amended) (see para 365 *post*), the person on whose application the reference was made (s 42(2)(b) (not yet in force: see note 1 *supra*)); (3) as regards such an application as is mentioned in s 42(1)(c) (see note 3 *supra*), the applicant (s 42(2)(c)).

Until a day to be appointed by order made by the Secretary of State, s 42(2)(b) has effect as modified by s 42(7): s 42(7)(c). At the date at which this volume states the law no such day had been appointed. See note 3 *supra*.

5 For the meaning of 'approved inspector' see para 354 *post*.

6 Building Act 1984 s 42(1) (not yet in force: see note 1 supra). As to the modification of s 42(1) (not yet in force) see note 3 supra.

7 Ibid s 42(3)(a) (not yet in force: see note 1 supra).

8 Ibid s 42(3)(b) (not yet in force: see note 1 supra). The text refers to a judgment of the court within the meaning of the Supreme Court Act 1981 s 16 (as amended) (see COURTS vol 10 (Reissue) para 639) (appeals from the High Court to the Court of Appeal): see the Building Act 1984 s 42(3)(b) (not yet in force: see note 1 supra).

9 le brought by virtue of ibid s 44 (not yet in force).

10 Ibid s 42(4)(a) (not yet in force: see note 1 supra). At the date at which this volume states the law no rules had been made under s 42(4) (not yet in force), and none have effect by virtue of the Interpretation Act 1978 s 17(2)(b).

11 Building Act 1984 s 42(4)(b) (not yet in force: see note 1 supra). See note 10 supra.

12 Ibid s 42(5) (not yet in force: see note 1 supra).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

350 Appeal and statement of case to the High Court in certain cases

TEXT AND NOTE 8--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/2. BUILDING REGULATIONS/(8) APPEALS IN RELATION TO BUILDING REGULATIONS/351. Procedure on appeal to Secretary of State on certain matters.

351. Procedure on appeal to Secretary of State on certain matters.

As from a day to be appointed, the following provisions have effect¹. On an appeal to the Secretary of State under the statutory provision relating to the use of materials unsuitable for permanent building² and under the statutory provision relating to appeals against a refusal to relax building regulation³, the Secretary of State may at his discretion afford to the appellant and the local authority⁴ an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose⁵. On determining such an appeal, the Secretary of State must give such directions, if any, as he considers appropriate for giving effect to his determination⁶. Building regulations⁷ may, in connection with such an appeal, include such supplementary provisions with respect to procedure as the Secretary of State thinks fit⁸.

1 The provisions of the Building Act 1984 s 43(1), (2) are to be brought into force by order made by the Secretary of State under s 134(1)(b) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. Section 43(3) has been brought into force in so far as it enables regulations to be made: see s 134(1)(a), (2). At the date at which this volume states the law no order bringing s 43(3) for remaining purposes had been made. As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

2 Ie under *ibid* s 20 (as amended): see para 332 ante.

3 Ie under *ibid* s 39: see para 347 ante

4 For the meaning of 'local authority' see para 301 note 12 ante.

5 Building Act 1984 s 43(1) (not yet in force: see note 1 supra).

6 *Ibid* s 43(2) (not yet in force: see note 1 supra).

7 For the meaning of 'building regulations' see para 306 ante.

8 Building Act 1984 s 43(3) (not yet in force: see note 1 supra) (which is expressed to be without prejudice to s 1(3), Sch 1 para 10(c) (see para 307 ante)).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/3. SUPERVISION/(1) SUPERVISION BY LOCAL AUTHORITIES/352. Duties of local authorities.

3. SUPERVISION

(1) SUPERVISION BY LOCAL AUTHORITIES

352. Duties of local authorities.

It is the duty of local authorities¹ to carry the Building Act 1984 into execution in their areas, subject to²:

- 182 (1) the provisions of the Building Act 1984 relating to certain other authorities or persons³;
- 183 (2) the provisions of Part I of the Public Health Act 1936⁴ relating to united districts and joint boards⁵;
- 184 (3) the provisions of the Local Government, Planning and Land Act 1980⁶ relating to building control functions in urban development areas⁷; and
- 185 (4) the provisions of the Public Health (Control of Disease) Act 1984⁸ relating to port health authorities and jurisdiction in any part of a port health district⁹.

It is the function¹⁰ of local authorities to enforce building regulations¹¹ in their areas¹².

1 For the meaning of 'local authority' see para 301 note 12 ante.

2 Building Act 1984 s 91(1). The provisions of the Public Health Act 1936 s 333 (protection for dock and railway undertakings) apply in relation to local authorities acting under the Building Act 1984 as they apply in relation to local authorities acting under the Public Health Act 1936: Building Act 1984 s 128. As to the making of building regulations to modify or repeal the provisions of s 91 (as amended), on the ground of inconsistency with other provisions see s 1(3), Sch 1 para 11(1); and para 307 ante. As to supervision of plans and works by approved inspectors and public bodies see para 354 et seq post.

3 Ibid s 91(1)(a).

4 Ie the Public Health Act 1936 Pt I (ss 1-13) (as amended): see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARAS 1, 101, 106.

5 Building Act 1984 s 91(1)(b). 'Joint board' has the meaning given by the Public Health Act 1936 s 343(1) (as amended) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 101); Building Act 1984 s 126.

6 Ie the Local Government, Planning and Land Act 1980 s 151: see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) para 1486.

7 Building Act 1984 s 91(1)(c).

8 Ie the Public Health (Control of Disease) Act 1984 s 1(3): see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 99.

9 Building Act 1984 s 91(1)(d). As to port health districts and authorities see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 102.

10 As to the meaning of 'functions' see para 303 note 19 ante.

11 For the meaning of 'building regulations' see para 306 ante.

12 Building Act 1984 s 91(2). This provision is expressed to be subject to s 5(3) (see para 314 ante), s 48(1) (as amended) (see para 357 ante) and s 53(2) (see para 363 ante): see s 91(2) (amended by the Local Government Act 1985 s 102(2), Sch 17).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

352 Duties of local authorities

TEXT AND NOTES--A local authority must keep in a register such information and documents as may be prescribed in connection with its functions, powers and duties conferred or imposed by or under the Building Act 1984: s 91A(1) (s 91A added by the Sustainable and Secure Buildings Act 2004 s 7. For the purposes of the 1984 Act s 91A 'documents' includes notices, certificates, orders, consents, demands and plans; 'prescribed' means prescribed by regulations made by the Secretary of State under this provision: s 91A(5). The information and documents that may be prescribed for the purposes of s 91A(1) include, in particular, (1) documents that are given or issued to, or deposited with, a local authority in accordance with provision made by or under this Act, or copies of such documents; (2) copies of documents that are given, made or issued by a local authority in accordance with provision so made; (3) information with respect to documents of the kind mentioned in heads (1) or (2); (4) information with respect to matters to which such documents relate: s 91A(2). Information and documents that are required to be kept in a register under s 91A(1) must be so kept for the prescribed period: s 91A(3). A local authority (a) must maintain the register in the prescribed manner; (b) must ensure that the register is available for inspection by members of the public during prescribed periods; (c) must, in prescribed circumstances, provide to members of the public, on request, copies of information and documents kept in the register; (d) may, in prescribed circumstances, charge a member of the public to whom it provides such copies a fee calculated in the prescribed manner: s 91A(4). Regulations under this provision may (i) provide for a provision thereof to apply generally, or in a particular area; (ii) make different provision for different areas and generally different provision for different circumstances or cases; (iii) include such supplemental, transitional and incidental provisions as appear to the Secretary of State to be expedient: s 91A(6). The transitional provision that may be included in regulations under this provision includes transitional provision in relation to information that, immediately before the coming into force of the regulations, was contained in registers kept by local authorities under s 56: s 91A(7) (s 91A as added). The power to make regulations under this provision is exercisable by statutory instrument, which is subject to annulment in pursuance of a resolution of either House of Parliament: s 91A(8) (s 91A as added).

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/3. SUPERVISION/(1) SUPERVISION BY LOCAL AUTHORITIES/353. Unauthorised building work.

353. Unauthorised building work.

'Unauthorised building work' means building work¹ other than work in relation to which an initial notice², an amendment notice³ or a public body's notice⁴ has effect, which is done without:

- 186 (1) a building notice⁵ being given to the local authority⁶;
- 187 (2) full plans of the work being deposited with the local authority⁷; or
- 188 (3) a notice of commencement of work being given⁸, where a building notice has been given or full plans⁹ have been deposited¹⁰.

Where it appears to a local authority that unauthorised building work has been carried out on or after 11 November 1985¹¹, the owner (referred to as 'the applicant') may apply in writing to the local authority for a regularisation certificate, and must send with his application:

- 189 (a) a statement that the application is being made¹² in accordance with the relevant building regulation¹³;
- 190 (b) a description of the unauthorised work¹⁴;
- 191 (c) so far as is reasonably practicable, a plan of the unauthorised work¹⁵; and
- 192 (d) so far as is reasonably practicable, a plan showing the relevant requirements (that is any additional work required to be carried out to secure that the unauthorised work complies with the requirements relating to building work in the building regulations which were applicable to that work when it was carried out)¹⁶.

Where a local authority receives such an application, it may require the applicant to take such reasonable steps, including laying open the unauthorised work for inspection by the authority, making tests and taking samples, as the authority thinks appropriate to ascertain what work, if any, is required to secure that the relevant requirements are met¹⁷. When the applicant has taken any such steps required by the local authority, and having had regard to any direction given¹⁸ dispensing with or relaxing a requirement in building regulations which applies to the unauthorised work, the local authority must notify the applicant:

- 193 (i) of the work which in its opinion is required to comply with the relevant requirements or those requirements as dispensed with or relaxed¹⁹;
- 194 (ii) that it cannot determine what work is required to comply with the relevant requirements or those requirements as dispensed with or relaxed²⁰; or
- 195 (iii) that no work is required to secure compliance with the relevant requirements or those requirements as dispensed with or relaxed²¹.

Where the local authority has been able to satisfy itself, after taking all reasonable steps for that purpose that the relevant requirements have been satisfied, taking account of any work carried out and any dispensation or relaxation given²², or that no work is required to secure that the unauthorised work satisfies the relevant requirements, taking account of any such dispensation or relaxation²³, it may give a certificate to that effect (referred to as 'a regularisation certificate')²⁴. A regularisation certificate is evidence, but not conclusive evidence, that the relevant requirements specified in the certificate have been complied with²⁵.

1 For the meaning of 'building work' see para 308 ante.

2 le a notice given under the Building Act 1984 s 47 (as amended) (see para 356 post): see the Building Regulations 2000, SI 2000/2531, reg 2(1). As to initial notices see para 356 et seq post.

3 le a notice given under the Building Act 1984 s 51A (as added) (see para 358 post): see the Building Regulations 2000, SI 2000/2531, reg 2(1). As to amendment notices see para 358 post.

4 le a notice given under the Building Act 1984 s 54 (see para 371 post): see the Building Regulations 2000, SI 2000/2531, reg 2(1). As to a public body's notice see para 371 et seq post.

5 For the meaning of 'building notice' see para 323 note 4 ante.

6 Building Regulations 2000, SI 2000/2531, reg 21(2)(a). Where reg 21 applies, reg 12 (as amended) (see para 323 ante) and reg 14 (as amended) (see para 325 ante) do not apply, and neither the supply of plans nor the taking of any other action in accordance with reg 21 is to be treated for the purposes of the Building Act 1984 s 16 (see para 329 ante) as the deposit of plans in accordance with building regulations: Building Regulations 2000, SI 2000/2531, reg 21(8).

7 Ibid reg 21(2)(b).

8 le in accordance with ibid reg 15(1) (as amended): see para 326 ante.

9 For the meaning of 'full plans' see para 323 note 5 ante.

10 Building Regulations 2000, SI 2000/2531, reg 21(2)(c).

11 Ibid reg 21(1).

12 le in accordance with ibid reg 21.

13 Ibid reg 21(3)(a).

14 Ibid reg 21(3)(b).

15 Ibid reg 21(3)(c).

16 Ibid reg 21(3)(d).

17 Ibid reg 21(4).

18 le given in accordance with the Building Act 1984 s 8 (see para 315 ante), s 9 (see para 316 ante) and Sch 2 (see para 317 ante).

19 Building Regulations 2000, SI 2000/2531, reg 21(5)(a).

20 Ibid reg 21(5)(b).

21 Ibid reg 21(5)(c).

22 Ibid reg 21(6)(a). See note 18 supra.

23 Ibid reg 21(6)(b).

24 Ibid reg 21(6).

25 Ibid reg 21(7).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/3. SUPERVISION/(2) SUPERVISION BY APPROVED INSPECTORS AND PUBLIC BODIES/(i) Supervision of Plans and Works by Approved Inspectors/A. APPROVED INSPECTORS/354. Approved inspectors.

(2) SUPERVISION BY APPROVED INSPECTORS AND PUBLIC BODIES

(i) Supervision of Plans and Works by Approved Inspectors

A. APPROVED INSPECTORS

354. Approved inspectors.

An approved inspector is a person who, in accordance with building regulations¹, is approved for the purposes of Part II of the Building Act 1984² by the Secretary of State³, or by a body, corporate or unincorporated, that, in accordance with the regulations, is designated by the Secretary of State for the purpose⁴. Any such approval may limit the description of work in relation to which the person concerned is an approved inspector⁵. Any such designation may limit the cases in which and the terms on which the body designated may approve a person and, in particular, may provide that any approval given by the body is to be limited⁶ as the description of work in relation to which the person concerned is an approved inspector⁷. There must be paid on an application for any such approval where the application is made to the Secretary of State, such fee as may be prescribed⁸, and where the application is made to a body designated by him, such fee as that body may determine⁹.

Building regulations may:

- 196 (1) contain provision prescribing the period for which, subject to any provision made by virtue of head (2) or head (3) below, any such approval continues in force¹⁰;
- 197 (2) contain provision precluding the giving of, or requiring the withdrawal of, any such approval as is referred to above in such circumstances as may be prescribed¹¹;
- 198 (3) contain provision authorising the withdrawal of any such approval or designation as is referred to above¹²;
- 199 (4) provide for the maintenance by the Secretary of State of a list of bodies that are for the time being designated by him, and by the Secretary of State and by each designated body, of a list of persons for the time being approved by him or them¹³;
- 200 (5) make provision for the supply to local authorities¹⁴ of copies of any list of approved inspectors maintained by virtue of head (4) above and for such copy lists to be made available for inspection¹⁵; and
- 201 (6) make provision for the supply, on payment of a prescribed fee, of a certified copy of any entry in a list maintained by virtue of head (4) above or in a copy list held by a local authority by virtue of head (5) above¹⁶.

Unless the contrary is proved, in any proceedings, whether civil or criminal, a document that appears to the court to be a certified copy of an entry either in a list maintained as mentioned in head (4) above or in a copy of such a list supplied as mentioned in head (5) above is presumed to be a true copy of an entry in the current list so maintained¹⁷, and is evidence of the matters stated in it¹⁸.

An approved inspector may make such charges in respect of the carrying out of such functions as may be prescribed with respect to the inspection of plans of work to which an initial notice

relates, the supervision of that work and the giving of certificates and other notices¹⁹ as may in any particular case be agreed between him and the person who intends to carry out the work²⁰ in question or, as the case may be, by whom that work is being or has been carried out²¹.

Nothing in Part II of the Building Act 1984 prevents an approved inspector from arranging for plans²² or work to be inspected on his behalf by another person, but such a delegation does not extend to the giving of a plans certificate²³ or a final certificate²⁴; and nor does it affect any liability, whether civil or criminal, of the approved inspector which arises out of functions conferred on him by Part II of the Building Act 1984 or by building regulations²⁵. However, an approved inspector is liable for negligence on the part of a person carrying out an inspection on his behalf in like manner as if it were negligence by a servant of his acting in the course of his employment²⁶.

1 For the meaning of 'building regulations' see para 306 ante.

2 I.e. the Building Act 1984 Pt II (ss 47-58) (as amended). As to supervision of works by local authorities see para 352 ante. As to supervision by public bodies of their own work see para 370 et seq post.

3 As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

4 Building Act 1984 s 49(1). It was correct for the local authority to leave the interpretation of the building regulations to the good sense and experience of their building inspectors, but the final responsibility rests with the local authority itself and not with the inspector: *Worlock v SAWS (a firm) and Rushmoor Borough Council* (1982) 22 BLR 66, CA.

If it appears to the Secretary of State that a body might properly be designated as a body to approve inspectors he may, if the body consents, designate it for that purpose: Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 4. Where the Secretary of State has designated a body in this way, a person seeking to be an approved inspector must apply to a designated body giving particulars of his qualifications and experience in the case of a person other than a body corporate, and giving particulars of the number, qualifications and experience of the people to be employed in the discharge of its functions under the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532 (as amended) in the case of a body corporate: reg 3(1). The person must answer any inquiries which that designated body makes about those matters: reg 3(1). Where there is no designated body, a person seeking to be an approved inspector must apply to the Secretary of State giving particulars of his qualifications and experience in the case of a person other than a body corporate, and giving particulars of the number, qualifications and experience of the people to be employed in the discharge of its functions under the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532 (as amended) in the case of a body corporate: reg 3(2). The person must answer any inquiries which the Secretary of State makes about those matters: reg 3(2). The approval of an inspector or the designation of a body to approve inspectors must be given to that person or body by a notice in writing specifying any limitation on the approval or designation: reg 5.

5 Building Act 1984 s 49(2).

6 I.e. limited as is mentioned in *ibid* s 49(2): see the text to note 5 supra.

7 *Ibid* s 49(3).

8 *Ibid* s 49(4)(a). 'Prescribed' means prescribed by building regulations: see s 126.

9 *Ibid* s 49(4)(b).

10 *Ibid* s 49(5)(a). The approval of an inspector given by a designated body or by the Secretary of State ceases to have effect at the end of a period of five years from the date on which it was given: Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 6(1).

11 Building Act 1984 s 49(5)(b).

12 *Ibid* s 49(5)(c). The approval of an inspector may be withdrawn by a notice in writing given to the inspector by the person who approved him: Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 6(2). The Secretary of State may withdraw the designation of a designated body by giving the body notice in writing, but such withdrawal does not affect the operation of any subsisting approval given by the body, and a subsisting approval may be withdrawn by the Secretary of State as if it had been given by him: reg 6(3).

Where an approved inspector is convicted of an offence under the Building Act 1984 s 57 (false or misleading notices and certificates, etc) (see para 329 ante), the person by whom the approval was given may on receipt of a certificate of the conviction forthwith withdraw the approval and no further approval may be given to an approved inspector whose approval has been withdrawn for a period of five years beginning with the date of his conviction: Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 6(4).

13 Building Act 1984 s 49(5)(d). The Secretary of State must maintain a list of bodies which are for the time being designated by him for the purpose of approving inspectors, and a list of inspectors for the time being approved by him: Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 7(1). A designated body must maintain a list of inspectors for the time being approved by it, and notify every local authority in whose area the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532 (as amended) apply as soon as practicable after withdrawing approval from any inspector: reg 7(3). Lists maintained under reg 7 must set out any limitation placed on the approval or designation of the persons or bodies listed and must indicate the date on which each approval will expire: reg 7(4).

14 For the meaning of 'local authority' see para 301 note 12 ante.

15 Building Act 1984 s 49(5)(e). The Secretary of State must supply to every local authority in whose area the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532 (as amended) apply a copy of the first lists of approved inspectors and designated bodies prepared by him under reg 7, and he must notify every such local authority as soon as practicable of the withdrawal of any approval or designation and of any addition to the lists: reg 7(2).

16 Building Act 1984 s 49(5)(f).

17 Ibid s 49(6)(a).

18 Ibid s 49(6)(b).

19 I.e. the functions referred to in ibid s 47(1) (as amended) (see para 356 ante). As to the meaning of 'functions' see para 303 note 19 ante.

20 A reference in ibid Pt II (as amended) to the carrying out of work includes a reference to the making of a material change of use, as defined by and for the purposes of building regulations: s 58(2). For the meaning of 'material change of use' see para 309 ante. A builder purports to have carried out any part of the works when that part is complete, whether or not practical completion has been achieved: *Antino v Epping Forest District Council* (1991) 53 BLR 56, (1991) 155 JP 663, DC. The owner of a building who authorises a contractor to carry out building works on his behalf is a 'person carrying out building works' for the purposes of the building regulations; the meaning of that term is not restricted to the person who physically performs the work: *Blaenau Gwent Borough Council v Khan* (1993) 35 ConLR 65, DC.

21 Building Act 1984 s 49(7).

22 As to the meaning of 'plans' see para 307 note 8 ante.

23 I.e. a certificate under the Building Act 1984 s 50 (as amended): see para 365 post.

24 Ibid s 49(8)(a). The text refers to a certificate under s 51 (as amended): see para 366 post.

25 Ibid s 49(8)(b).

26 Ibid s 49(8).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/3. SUPERVISION/(2) SUPERVISION BY APPROVED INSPECTORS AND PUBLIC BODIES/(i) Supervision of Plans and Works by Approved Inspectors/A. APPROVED INSPECTORS/355. Independence of approved inspectors.

355. Independence of approved inspectors.

An approved inspector must have no professional or financial interest in the work he supervises unless it is minor work¹. 'Minor work' means:

- 202 (1) the material alteration² or extension of a dwelling-house³ which before the work is carried out⁴ has two storeys⁵ or less and which afterwards has no more than three storeys⁶; or
- 203 (2) the provision, extension or material alteration of a controlled service or fitting⁷ in or in connection with any building⁸; or
- 204 (3) work consisting of the underpinning of a building⁹.

A person is to be regarded as having a professional or financial interest in the work described in any notice or certificate given under the Building (Approved Inspectors etc) Regulations 2000¹⁰ if:

- 205 (a) he is or has been responsible for the design or construction of any of the work in any capacity¹¹;
- 206 (b) he or any nominee of his is a member, officer or employee of a company or other body which has a professional or financial interest in the work¹²; or
- 207 (c) he is a partner or is in the employment of a person who has a professional or financial interest in the work¹³.

A person is to be treated as having a professional or financial interest in the work even if he has that interest only as trustee for the benefit of some other person¹⁴, and in the case of married people living together, the interest of one spouse, if known to the other, is deemed to be also an interest of the other¹⁵.

Involvement in the work as an approved inspector, entitlement to any fee paid for his function as an approved inspector, and potential liability to pay any sum if a claim is made under the insurance cover provided for the purposes of the Building Act 1984, are not to be regarded as constituting a professional or financial interest for these purposes¹⁶.

1 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 10(2).

2 For the meaning of 'material alteration' see para 308 note 6 ante; definition applied by *ibid* reg 2(1).

3 For these purposes, 'dwelling-house' does not include a flat or a building containing a flat (*ibid* reg 2(1)) and 'flat' means separate and self-contained premises constructed or adapted for use for residential purposes and forming part of a building from some other part of which it is divided horizontally (reg 2(1)). 'Building' means any permanent or temporary building but not any other kind of structure or erection, and a reference to a building includes a reference to part of a building: reg 2(1).

4 Any reference in the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532 (as amended), to the carrying out of work includes a reference to the making of a material change of use: reg 2(3). For the meaning of 'material change of use' see para 309 ante; definition applied by reg 2(1).

5 For these purposes, a basement is not to be regarded as a storey: *ibid* reg 10(1).

6 Ibid reg 10(1)(a).

7 For these purposes, 'controlled service or fitting' means a service or fitting in relation to which the Building Regulations 2000, SI 2000/2531, regs 4, 6 (as amended), Sch 1 Pt G (hygiene), Pt H (as substituted) (drainage and waste disposal), Pt J (as substituted) (combustion appliances and fuel storage systems) or Pt L (as substituted) (conservation of fuel and power) imposes a requirement: Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 2(1) (amended by SI 2001/3336).

8 Ibid reg 10(1)(b).

9 Ibid reg 10(1)(c).

10 Ie the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532 (as amended).

11 Ibid reg 10(3)(a).

12 Ibid reg 10(3)(b).

13 Ibid reg 10(3)(c).

14 Ibid reg 10(4)(a).

15 Ibid reg 10(4)(b).

16 Ibid reg 10(5).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

355 Independence of approved inspectors

NOTE 7--'Controlled service or fitting' now also refers to the SI 2000/2531 Sch 1 Pt P (electrical safety): SI 2000/2531 (amended by SI 2004/3210).

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B. SUPERVISION OF PLANS AND WORKS

(A) INITIAL NOTICES

356. Giving and acceptance of initial notice.

If:

- 208 (1) a notice in the prescribed¹ form (an 'initial notice') is given jointly to a local authority² by a person intending to carry out work³ and a person who is an approved inspector⁴ in relation to that work⁵;
- 209 (2) the initial notice is accompanied by such plans⁶ of the work as may be prescribed⁷;
- 210 (3) the initial notice is accompanied by such evidence as may be prescribed that an approved scheme applies, or the prescribed insurance cover has been or will be provided, in relation to the work⁸; and
- 211 (4) the initial notice is accepted by the local authority⁹,

then, so long as the initial notice continues in force¹⁰, the approved inspector by whom the notice was given must undertake such functions¹¹ as may be prescribed with respect to the inspection of plans of the work to which the notice relates, the supervision of that work and the giving of certificates and other notices¹².

A local authority to whom an initial notice is given may not reject the notice¹³ except on prescribed grounds¹⁴, but must reject the notice if any of those prescribed grounds exists¹⁵. In a case where the work to which an initial notice relates is work of such a description that, if plans of it had been deposited with the local authority, the authority could, under any enactment¹⁶, have imposed requirements as a condition of passing the plans¹⁷, the local authority may impose the like requirements as a condition of accepting the initial notice¹⁸. Unless, within the prescribed period¹⁹, the local authority to whom an initial notice is given gives notice of rejection, specifying the ground or grounds in question, to each of the persons by whom the initial notice was given, the authority is conclusively presumed to have accepted the initial notice and to have done so without imposing any such requirements²⁰.

A person aggrieved²¹ by the local authority's rejection of an initial notice may appeal to a magistrates' court²² acting for the petty sessions area in which is situated land on which there will be, or there has been, carried out any work to which the notice relates²³. On such an appeal the court must, if it determines that the notice was properly rejected, confirm the rejection²⁴, and in any other case, give a direction to the local authority to accept the notice²⁵. Where a person is aggrieved by such a determination, confirmation, direction or other decision of a magistrates' court, he may appeal to the Crown Court²⁶.

The Secretary of State²⁷ may approve for these purposes²⁸ any scheme that appears to him to secure the provision of adequate insurance cover in relation to any work to which an initial notice relates and is work to which the scheme applies²⁹. Building regulations may prescribe for these purposes the insurance cover that is to be provided in relation to any work to which an initial notice relates and is not work to which an approved scheme applies and may, in particular, prescribe the form and content of policies of insurance³⁰.

1 The prescribed by building regulations: see the Building Act 1984 s 126. An initial notice may be incorporated in a combined form together with a plans certificate, and references in s 47 (as amended) to an initial notice or a plans certificate include a reference to the combined form: see s 50(4); and para 365 post. The local authority is required to keep a register of initial notices: see s 56(1), (2) (as amended); and para 380 post. The register is open to public inspection: see s 56(4); and para 380 post.

For the prescribed form of a notice which is not combined with a plans certificate see the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 8(1)(a), Sch 2 Form 1 (amended by SI 2001/3336); and for the prescribed form of a notice which is combined with a plans certificate see the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, s 8(1)(b), Sch 2 Form 4 (amended by SI 2001/3336). An initial notice must be accompanied by the plans and documents described in the relevant form prescribed by the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 8(1); reg 8(2). Where any regulation requires the use of a numbered form in Sch 2 (as so amended), a form substantially to the like effect may be used: reg 2(2). Any reference in the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532 (as amended), to an initial notice, whether or not combined with a plans certificate, is in an appropriate case to be construed as a reference to that initial notice as amended by an amendment notice which has been accepted by a local authority: reg 2(4). As to amendment notices see para 358 post. For transitional provisions where an initial notice has been given before 1 January 2001 see reg 32, Sch 1.

The form prescribed for an initial notice may be such as to require: (1) either or both of the persons by whom the notice is to be given to furnish information relevant for the purposes of the Public Health Act 1936 Pt II (ss 33-90) (as amended) or Pt IV (ss 124-141) (as amended) of or any provision of building regulations; and (2) the approved inspector by whom the notice is to be given to enter into undertakings with respect to his performance of any of the functions referred to in the Building Act 1984 s 47(1) (as amended) (see the text and notes 2-12 infra): s 47(5). The provisions in the Public Health Act 1936 relating to building regulations were repealed by the Building Act 1984 s 133(2), Sch 7. For the meaning of 'building regulations' see para 306 ante.

2 For the meaning of 'local authority' see para 301 note 12 ante.

3 As to references to the carrying out of work see para 354 note 20 ante.

4 For the meaning of 'approved inspector' see para 354 ante. An approved inspector may make charges in respect of matters referred to in the Building Act 1984 s 47(1) (as amended): see s 49(7); and para 354 ante.

5 Ibid ss 47(1)(a), 58(1).

6 As to the meaning of 'plans' see para 307 note 8 ante.

7 Building Act 1984 s 47(1)(b). See note 4 supra.

8 Ibid s 47(1)(c).

9 Ibid s 47(1)(d).

10 Where an initial notice has continued in force for some period the local authority is entitled to require information to be furnished to it: see ibid s 56(5); and para 380 post. An initial notice: (1) comes into force when it is accepted by the local authority, either by notice given within the prescribed period to each of the persons by whom it was given or by virtue of s 47(3) (see the text and notes 19-20 infra); and (2) subject to s 51(3) (as amended) (see para 366 post) continues in force until it is cancelled by a notice under s 52 (as amended) (see para 361 post), or the occurrence of, or the expiry of a prescribed period of time beginning on the date of, such event as may be prescribed: s 47(4). Building regulations may empower a local authority to extend (whether before or after its expiry) any such period of time as is referred to in head (2) supra: s 47(4). As to the effect of an initial notice ceasing to be in force by virtue of s 47(4)(b)(i) or s 47(4)(b)(ii) see s 53 (as amended); and para 363 post. As to events causing an initial notice to cease to be in force see para 362 post.

11 As to the meaning of 'functions' see para 303 note 19 ante. An approved inspector by whom an initial notice has been given must, so long as the notice continues in force, take such steps, which may include the making of tests of building work and the taking of samples of material, as are reasonable to enable him to be satisfied within the limits of professional skill and care that the Building Regulations 2000, SI 2000/2531, reg 4 (requirements relating to building work) (see para 308 ante), reg 6 (as amended) (requirements relating to material change of use) (see para 309 ante), reg 7 (materials and workmanship) (see para 308 ante) and the requirements of the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 12 (energy rating) (see para 369 post) are complied with: reg 11(1) (amended by SI 2001/3336). In a case where any requirement of the Building Regulations 2000, SI 2000/2531, reg 4, Sch 1 Pt L (as substituted) (requirement as to the conservation of fuel and power) (see para 308 ante) is to be complied with by the insertion of insulating material into the cavity in a wall after that wall has been constructed, the approved inspector need not supervise the insertion of the insulating material but must state in the final certificate whether or not at the

date of that certificate the material has been inserted: Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 11(2). For the meaning of 'building work' see para 308 ante; definition applied by reg 2(1). As to final certificates see para 366 post.

12 Building Act 1984 s 47(1) (amended by the Deregulation (Building) (Initial Notices and Final Certificates) Order 1996, SI 1996/1905, arts 3(1), (2), 5, in relation to initial notices which came into force on or after 14 October 1996). As to the form of certificates and notices see para 418 post. As to their service see para 420 post.

As to supervision of works by local authorities see para 352 ante. As to supervision by public bodies of their own work see para 370 et seq post.

13 A person aggrieved by the rejection of an initial notice may appeal to a magistrates' court: see the Building Act 1984 s 55(1)(a): see the text to note 23 infra.

14 As to the grounds which have been prescribed see the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 8(3), Sch 3 (amended by SI 2001/3336).

15 Building Act 1984 s 47(2)(a), (b).

16 As to the meaning of 'enactment' see para 305 note 2 ante.

17 As to the power of a local authority to impose conditions on passing plans under building regulations see the Building Act 1984 s 16(2)-(4); and para 329 ante.

18 Ibid s 47(2).

19 The period within which a local authority may give notice of rejection of an initial notice is five days beginning with the day on which the notice is given: Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 8(4). 'Day' means any period of 24 hours commencing at midnight and excludes any Saturday, Sunday, Bank holiday or public holiday: reg 2(1).

20 Building Act 1984 s 47(3).

21 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARA 656.

22 See generally MAGISTRATES. As to appeals generally see paras 422-423 post.

23 Building Act 1984 s 55(1).

24 Ibid s 55(2)(a).

25 Ibid s 55(2)(b).

26 Ibid s 55(3).

27 As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

28 Ie for the purposes of the Building Act 1984 s 47 (as amended).

29 Ibid s 47(6) (amended by the Deregulation (Building) (Initial Notices and Final Certificates) Order 1996, SI 1996/1905, arts 3(1), (2), 5, in relation to initial notices which came into force on or after 14 October 1996).

30 Building Act 1984 s 47(7) (amended by the Deregulation (Building) (Initial Notices and Final Certificates) Order 1996, SI 1996/1905, arts 3(1), (2), 5, in relation to initial notices which came into force on or after 14 October 1996).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

356-359 Giving and acceptance of initial notice ... Effect of amendment notice

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

356 Giving and acceptance of initial notice

NOTE 11--Reference to SI 2000/2531 regs 4A, 4B (see PARA 308), 16B (see PARA 328B), 17C, 17D (see PARA 328A.1), SI 2000/2532 regs 12A-12D (see PARAS 369A-369D) added: reg 11(1) (amended by SI 2002/2872, SI 2006/652, SI 2006/3318). As to provisions applicable to self certification schemes for building work see SI 2000/2532 reg 11A (added by SI 2006/652).

TEXT AND NOTE 12--For 'giving' read 'giving and receiving': Building Act 1984 s 47(1) (amended by the Sustainable and Secure Buildings Act 2004 s 8(2)).

NOTE 14--SI 2000/2532 Sch 3 further amended: SI 2004/3168 (England), SI 2005/2929 (Wales).

TEXT AND NOTE 23--Words 'acting ... relates' omitted: 1984 Act s 55(1) (amended by the Courts Act 2003 Sch 8 para 280, Sch 10).

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357. Effect of initial notice.

So long as an initial notice continues in force¹, the function² of enforcing building regulations³ that is conferred on a local authority⁴ is not exercisable in relation to the work to which the notice relates, and accordingly a local authority may not give a notice to remove or alter work contravening building regulations⁵ in relation to that work⁶, and it may not institute proceedings⁷ for a contravention⁸ of building regulations that arises out of the carrying out of that work⁹.

In relation to the removal or alteration of work contravening building regulations¹⁰ and in relation to securing payment of the expenses of the execution of street works in private streets adjacent to new buildings under the advance payments code¹¹, special provision is made with respect to the effect of initial notices¹². The giving of an initial notice accompanied by such plans as may be prescribed to accompany the initial notice¹³ is to be treated as the deposit of plans¹⁴, and plans accompanying an initial notice are to be treated as the deposited plans¹⁵. Acceptance or rejection of an initial notice is to be treated as the passing or, as the case may be, the rejection of plans¹⁶, and the cancellation of an initial notice¹⁷ is to be treated as a declaration¹⁸ that the deposit of plans is of no effect¹⁹.

Special provision is also made²⁰ with respect to the effect of initial notices in relation to the exercise of a fire authority's²¹ powers where provisions of building regulations as to means of escape apply²². The acceptance by a local authority of an initial notice relating to any work is to be treated as the deposit of plans of the work with the authority in accordance with building regulations²³, and references²⁴ to matters or circumstances of which particulars are not or were not required by or under the building regulations to be supplied to the local authority in connection with the deposit of plans are to be construed as references to matters or circumstances of which particulars would not be or, as the case may be, would not have been required to be so supplied if plans were to be or had been deposited with the authority in accordance with building regulations²⁵.

1 As to initial notices see para 356 ante. As to the duration of initial notices see para 356 note 10 ante.

2 As to the meaning of 'functions' see para 303 note 19 ante.

3 For the meaning of 'building regulations' see para 306 ante.

4 Ie by the Building Act 1984 s 91(2) (as amended) (see para 352 ante). For the meaning of 'local authority' see para 301 note 12 ante.

5 Ie under *ibid* s 36(1): see para 344 ante.

6 *Ibid* s 48(1)(a) (amended by the Deregulation (Building) (Initial Notices and Final Certificates) Order 1996, SI 1996/1905, arts 3(1), (3), 5, in relation to initial notices which came into force on or after 14 October 1996).

7 Ie under the Building Act 1984 s 35: see para 343 ante.

8 As to the meaning of 'contravention' see para 310 note 10 ante.

9 Building Act 1984 s 48(1)(b) (as amended: see note 6 supra). As to references to the carrying out of work see para 354 note 20 ante.

10 le under ibid s 36(2) (see para 344 ante), s 36(5) (see para 344 ante) in so far as it relates to a notice under s 36(2) and to non-compliance with any such requirement as is referred to in s 36(2), and s 36(6) (see para 344 ante) in so far as it relates to a contravention of the Building Act 1984: s 48(3)(a)-(c).

11 le under the Highways Act 1980 ss 219-225 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (Reissue) para 179 et seq): Building Act 1984 s 48(3)(e).

12 See ibid s 48(2).

13 le such plans as are referred to in ibid s 47(1)(b) (see para 356 ante). As to the meaning of 'plans' see para 307 note 8 ante.

14 Ibid s 48(2)(a).

15 Ibid s 48(2)(b).

16 Ibid s 48(2)(c).

17 le under ibid s 52(2): see para 361 post.

18 le under ibid s 32: see para 339 ante.

19 Ibid s 48(2)(d).

20 See ibid s 48(4) (as amended).

21 For these purposes, 'fire authority' has the same meaning as in the Fire Precautions Act 1971 s 43(1) (see FIRE SERVICES vol 18(2) (Reissue) para 17): Building Act 1984 s 126.

22 le under the Fire Precautions Act 1971 s 9D (as added) (see FIRE SERVICES vol 18(2) (Reissue) para 90) and s 13 (as amended) (see FIRE SERVICES vol 18(2) (Reissue) para 113).

23 Building Act 1984 s 48(4)(a) (amended by the Fire Safety and Safety of Places of Sport Act 1987 s 7(4))

24 le references in the Fire Precautions Act 1971 s 9D(4)(b) (as added), s 13(1)(ii), (3)(b).

25 Building Act 1984 s 48(4)(b) (amended by the Fire Safety and Safety of Places of Sport Act 1987 s 7(4)).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

356-359 Giving and acceptance of initial notice ... Effect of amendment notice

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

357 Effect of initial notice

TEXT AND NOTES 20-25--1984 Act s 48(4) repealed: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

NOTE 21--1971 Act replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

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358. Variation of work to which initial notice relates.

Where it is proposed that the work to which an initial notice¹ relates should be varied², if:

- 212 (1) a notice in the prescribed³ form (an 'amendment notice')⁴ is given to the local authority⁵ by whom the initial notice was accepted, and is jointly given by the approved inspector⁶ who gave the initial notice⁷ and by the person shown in the amendment notice as the person intending to carry out the relevant work⁸;
- 213 (2) the amendment notice is accompanied by such plans⁹ of the proposed variation as may be prescribed¹⁰;
- 214 (3) the amendment notice is accompanied by such evidence as may be prescribed that a scheme approved for the purposes of the giving and acceptance of an initial notice¹¹ applies, or the insurance cover prescribed for those purposes has been, or will be provided, in relation to the relevant work¹²; and
- 215 (4) the amendment notice is accepted by the local authority giving notice of acceptance within the prescribed period to each of the persons by whom the amendment notice was given, or is deemed¹³ to have been accepted by the local authority¹⁴,

the work to which the initial notice relates must be treated as varied as proposed in the amendment notice¹⁵. A local authority to whom an amendment notice is given may not reject the notice except on prescribed grounds¹⁶, but must reject the notice if any of the prescribed grounds exists¹⁷.

Where the relevant work is of such a description that, if plans of it had been deposited with the local authority, the authority could, under any enactment¹⁸, have imposed requirements as a condition of passing the plans, the local authority may impose the like requirements as a condition of accepting the amendment notice¹⁹. Unless, within the prescribed period, the local authority to whom an amendment notice is given gives notice of rejection²⁰, specifying the ground or grounds in question, to each of the persons by whom the notice was given, the authority is conclusively presumed to have accepted it and to have done so without imposing any such requirements²¹.

A person aggrieved²² by the local authority's rejection of an amendment notice may appeal to a magistrates' court²³ acting for the petty sessions area in which is situated land on which there will be, or there has been, carried out any work to which the notice relates²⁴. On such an appeal the court must if it determines that the notice was properly rejected confirm the rejection²⁵, and in any other case, give a direction to the local authority to accept the notice²⁶. Where a person is aggrieved by such a determination, confirmation, direction or other decision of a magistrates' court, he may appeal to the Crown Court²⁷.

1 As to initial notices see para 356 ante.

2 Ibid s 51A(1) (s 51A added by the Deregulation (Building) (Initial Notices and Final Certificates) Order 1996, SI 1996/1905, art 2, in relation to initial notices which came into force on or after 14 October 1996).

3 Ie prescribed by building regulations: see the Building Act 1984 s 126.

4 The form prescribed for an amendment notice may be such as to require: (1) either or both of the persons by whom the notice is to be given to furnish information relevant for the purposes of the Public Health Act 1936 Pt II (ss 33-90) (as amended) or Pt IV (ss 124-141) (as amended) of or any provision of building regulations; and (2) the approved inspector by whom the notice is to be given to enter into undertakings with respect to his performance of any of the functions referred to in the Building Act 1984 s 47(1) (as amended) (see para 356 ante): ss 47(5), 51A(6) (as added: see note 2 supra). The provisions in the Public Health Act 1936 relating to building regulations were repealed by the Building Act 1984 s 133(2), Sch 7. For the prescribed form of an amendment notice see the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 9(1), Sch 2 Form 2 (amended by SI 2001/3336). For transitional provisions where an amendment notice has been given before 1 January 2001 see the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 32, Sch 1.

5 For the meaning of 'local authority' see para 301 note 12 ante.

6 For the meaning of 'approved inspector' see para 354 ante.

7 As to references to an initial notice given by an approved inspector see para 365 note 11 ante.

8 Building Act 1984 s 51A(2)(a) (as added: see note 2 supra), s 58(1) (amended by the Deregulation (Building) (Initial Notices and Final Certificates) Order 1996, SI 1996/1905, arts 3(1), (10), 5, in relation to initial notices which came into force on or after 14 October 1996). For these purposes, references to the relevant work are to the work to which the initial notice, as proposed to be varied, relates: Building Act 1984 s 51A(7) (as added: see note 2 supra).

9 As to the meaning of 'plans' see para 307 note 8 ante.

10 Building Act 1984 s 51A(2)(b) (as added: see note 2 supra). An amendment notice must be accompanied by the plans and documents described in the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, Sch 2 Form 2 (as amended): reg 9(2).

11 Ie for the purposes of the Building Act 1984 s 47 (as amended): see para 356 ante.

12 Ibid s 51A(2)(c) (as added: see note 2 supra).

13 Ie by virtue of ibid s 51A(5) (as added): see the text to notes 20-21 infra.

14 Ibid s 51A(2)(d) (as added: see note 2 supra).

15 Ibid s 51A(2) (as added: see note 2 supra).

16 Ibid s 51A(3)(a) (as added: see note 2 supra). The prescribed grounds are set out in the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 9(3), Sch 3 paras 1-11 (amended by SI 2001/3336).

17 Building Act 1984 s 51A(3)(b) (as added: see note 2 supra).

18 As to the meaning of 'enactment' see para 305 note 2 ante.

19 Building Act 1984 s 51A(4) (as added: see note 2 supra).

20 The period within which a local authority may give notice of rejection of an amendment notice is five days beginning with the day on which the notice is given: Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 9(4).

21 Building Act 1984 s 51A(5) (as added: see note 2 supra). Section 47(5) (form prescribed for an initial notice) (see para 356 ante) applies in relation to the form prescribed for an amendment notice as it applies in relation to the form prescribed for an initial notice: s 51A(6) (as so added).

22 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARA 656.

23 See generally MAGISTRATES. As to appeals generally see paras 422-423 post.

24 Building Act 1984 s 55(1) (amended by the Deregulation (Building) (Initial Notices and Final Certificates) Order 1996, SI 1996/1905, arts 3(1), (8), 5, in relation to initial notices which came into force on or after 14 October 1996).

25 Building Act 1984 s 55(2)(a).

26 Ibid s 55(2)(b).

27 Ibid s 55(3).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

356-359 Giving and acceptance of initial notice ... Effect of amendment notice

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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359. Effect of amendment notice.

In relation to the removal or alteration of work contravening building regulations¹ and in relation to securing payment of the expenses of the execution of street works in private streets adjacent to new buildings under the advance payments code², special provision is made with respect to the effect of amendment notices³. The giving of an amendment notice accompanied by the prescribed plans of the proposed variation⁴ is to be treated as the deposit of plans⁵, and the acceptance or rejection of an amendment notice is to be treated as the passing, or, as the case may be, the rejection of plans⁶. Where an initial notice⁷ is varied by an amendment notice, the deposited plans are to be treated as including the plans accompanying the amendment notice⁸, and as excluding such of the plans previously treated as the deposited plans as are superseded by the plans accompanying the amendment notice⁹. Where an initial notice has been varied by an amendment notice, the cancellation of the initial notice¹⁰ is to be treated as a declaration¹¹ that the deposit of plans constituted by the giving of the amendment notice is of no effect¹².

Special provision is also made¹³ with respect to the effect of amendment notices in relation to the exercise of a fire authority's¹⁴ powers where provisions of building regulations¹⁵ as to means of escape apply¹⁶. The acceptance by a local authority¹⁷ of an amendment notice relating to any work is to be treated as the deposit of plans of the work with the authority in accordance with building regulations¹⁸.

1 Ie under the Building Act 1984 s 36(2) (see para 344 ante), s 36(5) (see para 344 ante) in so far as it relates to a notice under s 36(2) and to non-compliance with any such requirement as is referred to in s 36(2), and s 36(6) (see para 344 ante) in so far as it relates to a contravention of the Building Act 1984: s 48(3)(a)-(c). For the meaning of 'building regulations' see para 306 ante.

2 Ie under the Highways Act 1980 ss 219-225 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) para 179 et seq): Building Act 1984 s 48(3)(e).

3 See *ibid* ss 48(3), 51B(1) (s 51B added by the Deregulation (Building) (Initial Notices and Final Certificates) Order 1996, SI 1996/1905, art 2, in relation to initial notices which came into force on or after 14 October 1996). As to amendment notices see para 358 ante.

4 Ie such plans as are referred to in the Building Act 1984 s 51A(2)(b) (as added) (see para 358 ante). As to the meaning of 'plans' see para 307 note 8 ante.

5 Ibid s 51B(1)(a) (as added: see note 3 *supra*).

6 Ibid s 51B(1)(b) (as added: see note 3 *supra*).

7 As to initial notices see para 356 ante.

8 Building Act 1984 s 51B(1)(c)(i) (as added: see note 3 *supra*).

9 Ibid s 51B(1)(c)(ii) (as added: see note 3 *supra*).

10 Ie under *ibid* s 52(5): see para 361 post.

11 Ie under *ibid* s 32: see para 339 ante.

12 Ibid s 51B(1)(d) (as added: see note 3 *supra*).

13 See *ibid* s 51B(2) (as added).

14 For these purposes, 'fire authority' has the same meaning as in the Fire Precautions Act 1971 s 43(1) (see FIRE SERVICES vol 18(2) (Reissue) para 17); Building Act 1984 s 126.

15 For the meaning of 'building regulations' see para 306 ante.

16 *Ie* under the Fire Precautions Act 1971 s 9D (as added) (see FIRE SERVICES vol 18(2) (Reissue) para 90) and s 13 (as amended) (see FIRE SERVICES vol 18(2) (Reissue) para 113). As to the interrelation between the building regulations and the Fire Precautions Act 1971 see *City Logistics Ltd v Northamptonshire County Fire Officer* [2001] EWCA Civ 1216, [2002] 1 WLR 1124.

17 For the meaning of 'local authority' see para 301 note 12 ante.

18 Building Act 1984 s 51B(2) (as added: see note 3 *supra*).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

356-359 Giving and acceptance of initial notice ... Effect of amendment notice

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

359 Effect of amendment notice

TEXT AND NOTES 13-18--1984 Act s 51B(2) repealed: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

NOTE 14--1971 Act replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

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360. Change of person intending to carry out work.

Where it is proposed that the work to which an initial notice¹ relates should be carried out by a different person², if the approved inspector³ who gave the initial notice⁴, and the person who now proposes to carry out the work to which the initial notice relates, jointly give written notice of the proposal to the local authority⁵ by whom the initial notice was accepted, the initial notice is to be treated as showing as the person intending to carry out the work to which it relates the person mentioned in the notice⁶.

1 As to initial notices see para 356 ante.

2 Building Act 1984 s 51C(1) (s 51C added by the Deregulation (Building) (Initial Notices and Final Certificates) Order 1996, SI 1996/1905, art 2, in relation to initial notices which came into force on or after 14 October 1996).

3 For the meaning of 'approved inspector' see para 354 ante.

4 As to references to an initial notice given by an approved inspector see para 365 note 11 post.

5 For the meaning of 'local authority' see para 301 note 12 ante.

6 Building Act 1984 s 51C(2) (as added: see note 2 supra).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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(B) CESSATION OF EFFECT OF INITIAL NOTICE

361. Cancellation of initial notice.

If, at a time when an initial notice¹ is in force, the approved inspector²:

- 216 (1) becomes or expects to become unable to carry out, or to continue to carry out, his functions³ with respect to any of the work to which the initial notice relates⁴;
- 217 (2) is of the opinion that any of the work is being so carried out that he is unable adequately to carry out his functions with respect to it⁵; or
- 218 (3) is of the opinion that there is a contravention⁶ of any provision of building regulations⁷ with respect to any of that work⁸, and: (a) the approved inspector has, in accordance with building regulations, given notice of the contravention to the person carrying out the work⁹; and (b) within the prescribed¹⁰ period, that person has neither pulled down nor removed the work nor effected such alterations in it as may be necessary to make it comply with building regulations¹¹,

the approved inspector must cancel the initial notice by notice in the prescribed form given to the local authority¹² concerned and to the person carrying out or intending to carry out the work¹³.

If, at a time when an initial notice is in force, it appears to the person carrying out or intending to carry out the work to which the notice relates that the approved inspector is no longer willing or able to carry out his functions with respect to any of that work, he must cancel the initial notice by notice in the prescribed form given to the local authority concerned and, if it is practicable to do so, to the approved inspector¹⁴. If a person fails without reasonable excuse to give to a local authority such a notice¹⁵, he is liable on summary conviction to a fine¹⁶.

If, at a time when an initial notice is in force, it appears to the local authority by whom the initial notice was accepted that the work to which the initial notice relates has not been commenced within the period of three years beginning on the date on which the initial notice was accepted, the authority may cancel the initial notice by notice in the prescribed form¹⁷ given to the approved inspector by whom the initial notice was given¹⁸, and to the person shown in the initial notice as the person intending to carry out the work¹⁹.

Such notices²⁰ have the effect of cancelling the initial notice to which they relate with effect from the day on which the notice is given²¹.

1 As to initial notices see para 356 ante.

2 For the meaning of 'approved inspector' see para 354 ante.

3 As to the meaning of 'functions' see para 303 note 19 ante. As to the functions of approved inspectors see para 354 ante.

4 Building Act 1984 s 52(1)(a) (amended by the Deregulation (Building) (Initial Notices and Final Certificates) Order 1996, SI 1996/1905, arts 3(1), (6), 5, in relation to initial notices which came into force on or after 14 October 1996).

5 Building Act 1984 s 52(1)(b).

6 As to the meaning of 'contravention' see para 310 note 10 ante.

7 For the meaning of 'building regulations' see para 306 ante.

8 Building Act 1984 s 52(1)(b).

9 Ibid s 52(2)(a). Where an approved inspector is of the opinion that any of the work described in an initial notice which has been carried out contravenes any provision of building regulations, he may give notice in writing to the person carrying out the work specifying: (1) the requirement of building regulations which in his opinion has not been complied with; and (2) the location of the work which contravenes that requirement: Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 19(1). A notice of contravention given in accordance with reg 19(1) must inform the person carrying out the work that if within the prescribed period he has neither pulled down nor removed the work nor effected such alterations in it as may be necessary to make it comply with building regulations, the approved inspector will cancel the initial notice: reg 19(2). The period within which the person carrying out the work is to remedy the contravention as described in reg 19(2) is three months beginning with the day on which the notice is given: reg 19(3). As to references to initial notices in the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532 (as amended) see para 356 note 1 ante. As to references to the carrying out of work see para 355 note 4 ante. For the meaning of 'day' see para 356 note 19 ante.

10 Ie prescribed by building regulations: see the Building Act 1984 s 126. See note 9 supra.

11 Ibid s 52(2)(b).

12 For the meaning of 'local authority' see para 301 note 12 ante.

13 Building Act 1984 s 52(1). For the form of notice to be given by an approved inspector to cancel an initial notice in accordance with the Building Act 1984 s 52(1) (as amended) in circumstances referred to in s 52(2) (see head (2)(a) and head (2)(b) in the text) see the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 19(4), Sch 2 Form 6. Where notice of a contravention has been given under the Building Act 1984 s 52(2) and no further initial notice relating to the work has been accepted, that notice must specify the contravention: Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 19(4).

The owner of a building who authorises a contractor to carry out building works on his behalf is a 'person carrying out building works' for the purposes of the building regulations; the meaning of that term is not restricted to the person who physically performs the work: *Blaenau Gwent Borough Council v Khan* (1993) 35 ConLR 65, DC.

14 Building Act 1984 s 52(3) (amended by the Deregulation (Building) (Initial Notices and Final Certificates) Order 1996, SI 1996/1905, arts 3(1), (6), 5, in relation to initial notices which came into force on or after 14 October 1996). For the form of notice to be given by a person carrying out or intending to carry out work to cancel an initial notice in accordance with the Building Act 1984 s 52(3) (as amended) see the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 19(5), Sch 2 Form 7.

15 Ie the notice required by the Building Act 1984 s 52(3) (as amended): see the text to note 14 supra.

16 Ibid s 52(4). The fine imposed is one not exceeding level 5 on the standard scale: s 52(4). As to the standard scale see para 313 note 7 ante.

17 For the form of notice to be given by the local authority to cancel an initial notice in accordance with the Building Act 1984 s 52(5) (see the text to notes 18-19 infra) see the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 19(6), Sch 2 Form 8.

18 Building Act 1984 s 52(5)(a).

19 Ibid s 52(5)(b).

20 Ie notices under ibid s 52(1) (as amended) (see the text to notes 1-13 supra), s 52(3) (as amended) (see the text and note 14 supra), s 52(5) (see the text to notes 17-19 supra): see s 52(6).

21 See ibid s 52(6).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

361 Cancellation of initial notice

TEXT AND NOTE 9-Or, under head (3)(a), has given notice of the contravention to the person intending to carry out the work: 1984 Act s 52(2)(a) (amended by the Sustainable and Secure Buildings Act 2004 s 8(3).

TEXT AND NOTES 10, 11-Now head (b) within the prescribed period, the prescribed steps are not taken by the person who, in accordance with building regulations, is required to take them: 1984 Act s 52(2)(b) (amended by the 2004 Act s 8(3).

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362. Events causing initial notice to cease to be in force.

Where a final certificate¹ given in respect of work described in an initial notice² is rejected, the initial notice ceases to be in force in relation to the work described in the final certificate on the expiry of a period of four weeks beginning with the date on which notice of rejection is given³.

Where work described in an initial notice includes the erection, extension or material alteration⁴ of a building⁵, and the building or, as the case may be, the extension or any part of the building which has been materially altered is occupied⁶, and no final certificate is given⁷, the initial notice ceases to be in force in relation to the building, extension or part of a building which is occupied:

- 219 (1) if the building is to be put to a relevant use⁸, on the expiry of a period of four weeks beginning with the date of occupation⁹; and
- 220 (2) in any other case, on the expiry of a period of eight weeks beginning with the date of occupation¹⁰.

Where work described in an initial notice involves a material change of use¹¹ of a building, and no final certificate is given, and that change of use takes place, the initial notice ceases to be in force in relation to that change of use on the expiry of a period of eight weeks beginning with the date on which the change of use takes place¹².

In any other case where no final certificate is given, an initial notice ceases to be in force on the expiry of a period of eight weeks beginning with the date on which the work described in the initial notice is substantially completed¹³.

A local authority may extend any period referred to above either before or after its expiry¹⁴.

1 As to final certificates see para 366 post.

2 As to references to initial notices see para 356 note 1 ante.

3 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 18(1).

4 For the meaning of 'material alteration' see para 308 note 6 ante; definition applied by *ibid* reg 2(1).

5 For the meaning of 'building' see para 355 note 3 ante.

6 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 18(2)(a). An initial notice will not cease to be in force by virtue of reg 18(2) because part of a building or extension is occupied if a final certificate has been accepted in respect of that part: reg 18(5).

7 *Ibid* reg 18(2)(b). See note 6 *supra*.

8 For the meaning of a 'relevant use' see para 367 note 3 post; definition applied by *ibid* reg 18(2)(i).

9 *Ibid* reg 18(2)(i). See note 6 *supra*.

10 *Ibid* reg 18(2)(ii). See note 6 *supra*.

11 For the meaning of 'material change of use' see para 309 ante; definition applied by *ibid* reg 2(1).

12 Ibid reg 18(3).

13 Ibid reg 18(4).

14 Ibid reg 18(6).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

362 Events causing initial notice to cease to be in force

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTES 8, 9--SI 2000/2532 reg 18(2)(i) substituted by SI 2005/1541, and amended by SI 2006/3318.

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363. Effect of initial notice ceasing to be in force.

Where an initial notice¹ ceases² to be in force³, building regulations⁴ may provide that, if:

- 221 (1) a plans certificate⁵ was given before the day on which the initial notice ceased to be in force⁶;
- 222 (2) that certificate was accepted by the local authority⁷, before, on or after that day⁸; and
- 223 (3) before that day, that acceptance was not rescinded by a notice⁹,

then, with respect to the work specified in the certificate, such of the functions of enforcing building regulations¹⁰ of a local authority¹¹ as may be prescribed¹² are not exercisable or are exercisable only in prescribed circumstances¹³.

If, before the day on which the initial notice ceased to be in force, a final certificate¹⁴ was given in respect of part of the work to which the initial notice relates, and was accepted by the local authority (before, on or after that day), then, despite the fact that the initial notice has ceased to be in force, a local authority's functions in relation to enforcing building regulations are not exercisable in relation to that part of the work¹⁵.

For the purpose of enabling the local authority to perform its functions in relation to enforcing building regulations in relation to any part of the work not specified in a plans certificate or final certificate, as the case may be, building regulations may require the local authority to be provided with plans that relate not only to that part but also to the part to which the certificate in question relates¹⁶.

The fact that an initial notice has ceased to be in force does not affect the right to give a new initial notice relating to any of the work to which the original notice related and in respect of which no final certificate has been given and accepted¹⁷.

1 As to initial notices see para 356 ante.

2 Ie by virtue of the Building Act 1984 s 47(4)(b)(i) or s 47(4)(b)(ii): see para 356 ante.

3 Ibid s 53(1). In any case where s 53 (as amended) applies, the reference in s 36(4) (period within which a notice under s 36 may be given) (see para 344 ante) to the date of the completion of the work in question has effect, in relation to a notice under s 36(1) (notice to pull down or alter work which contravenes building regulations) (see para 344 ante), as if it were a reference to the date on which the initial notice ceased to be in force: s 53(5).

4 For the meaning of 'building regulations' see para 306 ante.

5 For the meaning of 'plans certificate' see para 365 post. As to the meaning of 'plans' see para 307 note 8 ante.

6 Building Act 1984 s 53(1)(a).

7 For the meaning of 'local authority' see para 301 note 12 ante.

8 Building Act 1984 s 53(2)(b).

9 Ibid s 53(2)(c). The text refers to a notice under s 50(8): see para 365 post.

10 As to the meaning of 'functions' see para 303 note 19 ante.

11 Ie referred to in the Building Act 1984 s 48(1) (as amended): see para 357 ante.

12 Ie prescribed by building regulations: see *ibid* s 126.

13 *Ibid* s 53(2). As to local authority powers in relation to partly completed work see para 364 post.

Subject to any provision of building regulations made by virtue of s 53(2), if, before the initial notice ceased to be in force, an offence under s 35 (penalty for contravention of building regulations) (see para 343 ante) was committed with respect to any of the work to which that notice relates, proceedings for that offence may be commenced by the local authority at any time within six months beginning with the day on which the functions of the local authority referred to in s 48(1) (as amended) (see para 357 ante) became exercisable with respect to the provision of building regulations to which the offence relates: s 53(6).

14 As to final certificates see para 366 post.

15 See the Building Act 1984 ss 51(3), 53(3) (amended by the Deregulation (Building) (Initial Notices and Final Certificates) Order 1996, SI 1996/1905, arts 3(1), (7), 5, in relation to initial notices which came into force on or after 14 October 1996).

16 Building Act 1984 s 53(4) (which is expressed to be notwithstanding anything in s 53(2), (3) (see the text and notes 4-15 *supra*)).

17 *Ibid* s 53(7) (amended by the Deregulation (Building) (Initial Notices and Final Certificates) Order 1996, SI 1996/1905, arts 3(1), (7), 5, in relation to initial notices which came into force on or after 14 October 1996). However, where a plans certificate has been given in respect of any of that work, the conditions in the Building Act 1984 s 53(2)(a)-(c) (see heads (1)-(3) in the text) are fulfilled with respect to that certificate, and such a new initial notice is given and accepted, s 50(1) (as amended) (giving of plans certificate) (see para 365 ante) does not apply in relation to so much of the work to which the new initial notice relates as is work specified in the plans certificate: see s 53(7).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

363 Effect of initial notice ceasing to be in force

NOTE 13--The 1984 Act s 53(6) is without prejudice to any ability which, after that function has become exercisable, the local authority may have under s 35A (see PARA 343) to commence proceedings for the offence after the end of that period of six months: s 53(6A) (added by the Climate Change and Sustainable Energy Act 2006 s 13(2)).

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364. Local authority powers in relation to partly completed work.

Where: (1) any part of the work described in an initial notice¹ has been carried out²; (2) the initial notice has ceased to be in force³, or has been cancelled⁴ by notice⁵; and (3) no other initial notice relating to that part of the work has been accepted⁶, the owner must⁷:

- 224 (a) on being given reasonable notice by the local authority, provide it with:
- 9
13. (i) sufficient plans of the work carried out, in respect of which no final certificate⁸ has been given, to show whether any part of that work would, if carried out in accordance with the plans, contravene any provision of the Building Regulations 2000⁹; and
14. (ii) where a plans certificate¹⁰ was given and not rejected in respect of any such part of the work, a copy of the plans to which it relates¹¹; and
- 10
- 225 (b) comply with any notice in writing from the local authority requiring him within a reasonable time to cut into, lay open or pull down so much of the work as prevents the local authority from ascertaining whether any work in relation to which there is no final certificate contravenes any requirement in the Building Regulations 2000¹².

Where heads (1) to (3) above apply and work in relation to a building¹³ has been begun but not completed, a person who intends to carry out further work in relation to the partly completed work must give the local authority sufficient plans to show that the intended work will not contravene any requirement in the Building Regulations 2000¹⁴, including such plans of any part of the work already carried out as may be necessary to show that the intended work can be carried out without contravening any such requirement¹⁵.

1 As to references to initial notices see para 356 note 1 ante.

2 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 20(1)(a). As to references to the carrying out of work see para 355 note 4 ante.

3 I.e. by reason of *ibid* reg 18: see para 362 ante.

4 I.e. under the Building Act 1984 s 52 (as amended): see para 361 ante.

5 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 20(1)(b).

6 *Ibid* reg 20(1)(c).

7 As to the penalty for contravention of *ibid* reg 20 see the Building Act 1984 s 35; the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 31; and para 343 ante.

8 As to final certificates see para 366 post.

9 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 20(2)(a)(i). The text refers to the Building Regulations 2000, SI 2000/2531 (as amended).

10 As to plans certificates see para 365 post.

- 11 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 20(2)(a)(ii).
- 12 Ibid reg 20(2)(b). See note 9 supra.
- 13 For the meaning of 'building' see para 355 note 3 ante.
- 14 See note 9 supra.
- 15 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 20(3). Plans given to a local authority in accordance with reg 20(3) are not to be regarded as plans deposited in accordance with building regulations: reg 20(4).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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(C) PLANS CERTIFICATES

365. Plans certificates.

Where an approved inspector¹:

- 226 (1) has inspected plans² of the work to which an initial notice³ given by him⁴ relates⁵;
- 227 (2) is satisfied that the plans neither are defective nor show that work carried out⁶ in accordance with them would contravene⁷ any provision of building regulations⁸; and
- 228 (3) has complied with any prescribed⁹ requirements as to consultation or otherwise¹⁰,

he must, if requested to do so by the person intending to carry out the work, give a certificate in the prescribed form¹¹ (referred to as a 'plans certificate') to the local authority¹² and to that person¹³. If any question arises between an approved inspector and a person who proposes to carry out any work whether plans of the work are in conformity with building regulations, that person may refer the question to the Secretary of State¹⁴ for his determination¹⁵. Such an application for a reference must be accompanied by such fee as may be prescribed¹⁶. A plans certificate may relate either to the whole or to part only of the work to which the initial notice concerned relates¹⁷, and does not have effect unless it is accepted by the local authority to whom it is given¹⁸.

A local authority to whom a plans certificate is given may not reject the certificate except on prescribed grounds¹⁹, but must reject the certificate if any of the prescribed grounds exists²⁰. Unless, within the prescribed period, the local authority to whom a plans certificate is given gives notice of rejection²¹, specifying the ground or grounds in question, to the approved inspector by whom the certificate was given, and the other person to whom the approved inspector gave the certificate, the authority is conclusively presumed to have accepted the certificate²².

A person aggrieved²³ by the local authority's rejection of a plans certificate may appeal to a magistrates' court²⁴ acting for the petty sessions area in which is situated land on which there will be, or there has been, carried out any work to which the notice relates²⁵. On such an appeal the court must if it determines that the notice was properly rejected confirm the rejection²⁶, and in any other case, give a direction to the local authority to accept the notice²⁷. Where a person is aggrieved by such a determination, confirmation, direction or other decision of a magistrates' court, he may appeal to the Crown Court²⁸.

If it appears to a local authority by whom a plans certificate has been accepted that the work to which the certificate relates has not been commenced within the period of three years beginning on the date on which the certificate was accepted, the authority may rescind its acceptance of the certificate by notice, specifying the ground or grounds in question, given to the approved inspector by whom the certificate was given²⁹, and to the person shown in the initial notice concerned as the person intending to carry out the work³⁰.

If an initial notice ceases to be in force³¹ and the conditions³² as to plans certificate given, accepted and not rescinded are satisfied, the local authority may not give a notice³³ for the removal or alteration of work which contravenes building regulations, or institute proceedings³⁴ for a contravention of building regulations in relation to any work described in the certificate which has been carried out in accordance with the plans to which the certificate relates³⁵.

1 For the meaning of 'approved inspector' see para 354 ante.

2 As to the meaning of 'plans' see para 307 note 8 ante.

3 As to initial notices see para 356 ante.

4 A reference in the Building Act 1984 Pt II (ss 47-58) (as amended) to an initial notice given by an approved inspector is a reference to a notice given by him jointly with another person as mentioned in s 47(1)(a) (see para 356 ante): s 58(3).

5 Ibid s 50(1)(a) (amended by the Deregulation (Building) (Initial Notices and Final Certificates) Order 1996, SI 1996/1905, arts 3(1), (4), 5, in relation to initial notices which came into force on or after 14 October 1996).

6 As to references to the carrying out of work see para 354 note 20 ante.

7 As to the meaning of 'contravene' see para 310 note 10 ante.

8 Building Act 1984 s 50(1)(b). For the meaning of 'building regulations' see para 306 ante.

9 Ie prescribed by building regulations: see ibid s 126.

10 Ibid s 50(1)(c). As to the prescribed requirements as to consultation see paras 367-368 post.

11 Building regulations may authorise the giving of an initial notice combined with a certificate under ibid s 50(1) (as amended), and may prescribe a single form for such a combined notice and certificate: s 50(4). Where such a prescribed form is used a reference in Pt II (as amended) to an initial notice or to a plans certificate includes a reference to that form: s 50(4)(a). However, should the form cease to be in force as an initial notice by virtue of s 47(4) (see para 356 ante), nothing in s 47(4) affects the continuing validity of the form as a plans certificate: s 50(4)(b). For the prescribed form of a plans certificate which is not combined with an initial notice see the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 14(a), Sch 2 Form 3 (amended by SI 2001/3336); and for the prescribed form of a plans certificate which is combined with an initial notice see the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 14(b), Sch 2 Form 4 (amended by SI 2001/3336).

12 For the meaning of 'local authority' see para 301 note 12 ante.

13 Building Act 1984 ss 50(1), 58(1). The approved inspector may not delegate his power to give a certificate under s 50 (as amended): see s 49(8)(a); and para 354 ante.

14 As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

15 Building Act 1984 s 50(2).

16 Ibid s 50(3).

17 Ibid s 50(5)(a) (amended by the Deregulation (Building) (Initial Notices and Final Certificates) Order 1996, SI 1996/1905, arts 3(1), (4), 5, in relation to initial notices which came into force on or after 14 October 1996).

18 Building Act 1984 s 50(5)(b). A local authority must keep a register of plans certificates: see s 56(1), (3) (as amended); and para 380 post. The register is open to public inspection: see s 56(4).

19 Ibid s 50(6)(a). As to the grounds which have been prescribed see the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 15(1), (2), Schs 3, 4 (amended by SI 2001/3336).

20 Building Act 1984 s 50(6)(b).

21 The period within which a local authority may give notice of rejection of a plans certificate, whether or not combined with an initial notice, is five days beginning on the day on which the certificate is given: Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 15(3).

22 Building Act 1984 s 50(7).

23 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARA 656.

24 See generally MAGISTRATES. As to appeals generally see paras 422-423 post.

25 Building Act 1984 s 55(1).

26 Ibid s 55(2)(a).

27 Ibid s 55(2)(b).

28 Ibid s 55(3).

29 Ibid s 50(8)(a).

30 Ibid s 50(8)(b).

31 Ie as described in ibid s 47(4)(b) (cancellation etc of initial notice): see para 356 ante.

32 Ie in ibid s 53(2): see para 363 ante.

33 Ie under ibid s 36(1): see para 344 ante.

34 Ie under ibid s 35: see para 343 ante.

35 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 16.

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

365 Plans certificates

NOTE 19--SI 2000/2532 Schs 3, 4 further amended: SI 2004/3168 (England), SI 2005/2929 (Wales).

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(D) FINAL CERTIFICATES

366. Final certificates.

Where an approved inspector¹ is satisfied that any work to which an initial notice² given by him³ relates has been completed, he must give to the local authority⁴ by whom the initial notice was accepted such certificate with respect to the completion of the work and the discharge of his functions⁵ as may be prescribed⁶ (a 'final certificate')⁷. A final certificate may relate either to the whole or to part only of the work to which the initial notice concerned relates⁸, and does not have effect unless it is accepted by the local authority to whom it is given⁹. A local authority to whom a final certificate is given may not reject the certificate except on prescribed grounds¹⁰, but must reject the certificate if any of the prescribed grounds exists¹¹. Unless, within the prescribed period, the local authority to whom a final certificate is given gives notice of rejection¹², specifying the ground or grounds in question, to the approved inspector by whom the certificate was given, and the other person to whom the approved inspector gave the certificate, the authority is conclusively presumed to have accepted the certificate¹³.

A person aggrieved¹⁴ by the local authority's rejection of a final certificate may appeal to a magistrates' court¹⁵ acting for the petty sessions area in which is situated land on which there will be, or there has been, carried out any work to which the notice relates¹⁶. On such an appeal the court must if it determines that the notice was properly rejected confirm the rejection¹⁷, and in any other case, give a direction to the local authority to accept the notice¹⁸. Where a person is aggrieved by such a determination, confirmation, direction or other decision of a magistrates' court, he may appeal to the Crown Court¹⁹.

Where a final certificate has been given with respect to any of the work to which an initial notice relates, and has been accepted by the local authority concerned, the initial notice ceases to apply to that work²⁰.

1 For the meaning of 'approved inspector' see para 354 ante.

2 As to initial notices see para 356 ante.

3 As to references to an initial notice given by an approved inspector see para 365 note 11 ante.

4 For the meaning of 'local authority' see para 301 note 12 ante.

5 As to the meaning of 'functions' see para 303 note 19 ante.

6 I.e. prescribed by building regulations: see the Building Act 1984 s 126.

7 Ibid s 51(1) (substituted by the Deregulation (Building) (Initial Notices and Final Certificates) Order 1996, SI 1996/1905, arts 3(1), (5), 4, 5, in relation to initial notices which came into force on or after 14 October 1996), Building Act 1984 s 58(1). For the prescribed form of a final certificate see the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 17(1), Sch 2 Form 5.

8 Building Act 1984 s 50(5)(a) (amended by the Deregulation (Building) (Initial Notices and Final Certificates) Order 1996, SI 1996/1905, arts 3(1), (4), 5, in relation to initial notices which came into force on or after 14 October 1996), Building Act 1984 s 51(2).

9 Ibid ss 50(5)(b), 51(2). A local authority must keep a register of plans certificates: see s 56(1), (3) (as amended); and para 380 post. The register is open to public inspection: see s 56(4); and para 380 post.

10 Ibid ss 50(6)(a), 51(2). As to the grounds which have been prescribed see the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 17(1), Sch 5.

11 Building Act 1984 ss 50(6)(b), 51(2).

12 The period within which a local authority may give notice of rejection of a final certificate is 10 days beginning with the day on which the certificate is given: Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 17(2).

13 Building Act 1984 ss 50(7), 51(2).

14 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARA 656.

15 See generally MAGISTRATES. As to appeals generally see paras 422-423 post.

16 Building Act 1984 s 55(1).

17 Ibid s 55(2)(a).

18 Ibid s 55(2)(b).

19 Ibid s 55(3).

20 Ibid s 51(3) (amended by the Deregulation (Building) (Initial Notices and Final Certificates) Order 1996, SI 1996/1905, arts 3(1), (5), 4, 5, in relation to initial notices which came into force on or after 14 October 1996). However, the provision which prohibits a local authority from exercising its functions of enforcing building regulations where an initial notice is in force (ie the Building Act 1984 s 48(1) (as amended) (see para 357 ante)) continues by virtue of s 51(3) to apply in relation to that work as if the initial notice continued in force in relation to it: s 51(3).

UPDATE

329-366 Passing or rejection of plans ... Final certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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(E) CONSULTATION

367. Approved inspector's consultation with the fire authority.

Where an initial notice¹ is to be given or has been given in relation to the erection, extension or material alteration² of a relevant building³ or in relation to building work in connection with a relevant change of use⁴ of a building and requirements as to fire safety are imposed⁵ in relation to the work⁶, the approved inspector must consult the fire authority⁷:

- 229 (1) before or as soon as practicable after giving an initial notice in relation to the work⁸;
- 230 (2) before or as soon as practicable after giving a relevant amendment notice⁹ in relation to the work¹⁰;
- 231 (3) before giving a plans certificate¹¹, whether or not combined with an initial notice¹²; and
- 232 (4) before giving a final certificate¹³.

Where an approved inspector is required to consult the fire authority in this way, he must give to the fire authority:

- 233 (a) in a case where he is consulting it in connection with an initial notice or an amendment notice, sufficient plans to show whether the work would, if carried out in accordance with those plans, comply with the applicable requirements¹⁴ as to fire safety¹⁵; and
- 234 (b) in a case where he is consulting it in connection with the giving of a plans certificate, a copy of the plans in relation to which he intends to give the certificate¹⁶.

Where an approved inspector is required to consult the fire authority he must have regard to any views it expresses¹⁷, and he must not give a plans certificate or a final certificate until 15 days¹⁸ have elapsed from the date on which he consulted it, unless it has expressed its views to him before the expiry of that period¹⁹.

Where a local enactment would, if plans were deposited in accordance with building regulations, require the local authority to consult the fire authority before or during the carrying out of any work, the approved inspector must consult the fire authority in a manner similar to that required by the enactment²⁰.

1 As to references to initial notices see para 356 note 1 ante.

2 For the meaning of 'material alteration' see para 308 note 6 ante; definition applied by the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 2(1).

3 For these purposes, a 'relevant building' is a building where it is intended that, after completion of building work, the building or any part of it will be put or will continue to be put to a relevant use: *ibid* reg 13(1). For the meaning of 'building' see para 355 note 3 ante. For the meaning of 'building work' see para 308 ante; definition applied by reg 2(1). For these purposes, a 'relevant use' is a use as a workplace of a kind to which the Fire

Precautions (Workplace) Regulations 1997, SI 1997/1840, Pt II (regs 3-6) (as amended) (see FIRE SERVICES vol 18(2) (Reissue) paras 133-135) applies or a use designated under the Fire Precautions Act 1971 s 1 (as amended) (see FIRE SERVICES vol 18(2) (Reissue) para 83): Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 13(1).

4 For these purposes, 'relevant change of use' is a material change of use where it is intended that, after the change of use has taken place, the building or any part of it will be put or will continue to be put to a relevant use: ibid reg 13(1). For the meaning of 'material change of use' see para 309 ante; definition applied by reg 2(1).

5 le by the Building Regulations 2000, SI 2000/2531, Sch 1 Pt B: see para 308 ante.

6 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 13(2).

7 For these purposes, 'fire authority' means the authority discharging in the area in which the premises are or are to be situated the functions of fire authority under the Fire Services Act 1947: Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 2(1). As to fire authorities see FIRE SERVICES vol 18(2) (Reissue) para 17.

8 Ibid reg 13(3)(a).

9 For these purposes, a 'relevant amendment notice' is an amendment notice where any of the work specified in the initial notice, as varied by the amendment notice, being work which could not have been carried out under the original notice ('additional work'), concerns the erection, extension or material alteration of a relevant building or is building work in connection with a relevant change of use of a building and the Building Regulations 2000, SI 2000/2531, Sch 1 Pt B (fire safety), imposes requirements in relation to the additional work: Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 13(1). As to references to the carrying out of work see para 355 note 4 ante.

10 Ibid reg 13(3)(b).

11 As to plans certificates see para 365 ante.

12 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 13(3)(c).

13 Ibid reg 13(3)(d). As to final certificates see para 366 ante.

14 le of the Building Regulations 2000, SI 2000/2531, Sch 1 Pt B: see para 308 ante.

15 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 13(4)(a).

16 Ibid reg 13(4)(b).

17 Ibid reg 13(5)(a).

18 For the meaning of 'day' see para 356 note 19 ante.

19 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 13(5)(b).

20 Ibid reg 13(6).

UPDATE

367 Approved inspector's consultation with the fire authority

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 3--Definition of 'relevant building' substituted, definition of 'relevant use' omitted: SI 2000/2532 reg 13(1) (amended by SI 2005/1541). 1971 Act, SI 1997/1840 replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

NOTE 4--Definition of 'relevant change of use' substituted: SI 2000/2532 reg 13(1) (as amended: see NOTE 3).

TEXT AND NOTES 7, 14-20--References to a fire authority are now references to a fire and rescue authority: SI 2000/2532 reg 13(3)-(6) (amended by SI 2004/3168 (England), SI 2005/2929 (Wales)). As to fire and rescue authorities see FIRE SERVICES.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/3. SUPERVISION/(2) SUPERVISION BY APPROVED INSPECTORS AND PUBLIC BODIES/(i) Supervision of Plans and Works by Approved Inspectors/B. SUPERVISION OF PLANS AND WORKS/(E) Consultation/368. Approved inspector's consultation with the sewerage undertaker.

368. Approved inspector's consultation with the sewerage undertaker.

Where an initial notice¹ or amendment notice² is to be given or has been given in respect of work in relation to which requirements are imposed³ relating to building over sewers⁴, the approved inspector must consult the sewerage undertaker:

- 235 (1) before or as soon as practicable after giving an initial notice in relation to the work⁵;
- 236 (2) before or as soon as practicable after giving an amendment notice in relation to the work⁶;
- 237 (3) before giving a plans certificate⁷, whether or not combined with an initial notice⁸; and
- 238 (4) before giving a final certificate⁹.

Where an approved inspector is required to consult the sewerage undertaker in this way, he must give to the sewerage undertaker:

- 239 (a) in a case where he is consulting it in connection with an initial notice or an amendment notice, sufficient plans to show whether the work would, if carried out¹⁰ in accordance with those plans, comply with the applicable requirements¹¹ of the provision relating to building over sewers¹²; and
- 240 (b) in a case where he is consulting it in connection with the giving of a plans certificate, a copy of the plans in relation to which he intends to give the certificate¹³.

Where an approved inspector is required¹⁴ to consult the sewerage undertaker he must have regard to any views it expresses¹⁵, and he must not give a plans certificate or a final certificate until 15 days¹⁶ have elapsed from the date on which he consulted it, unless it has expressed its views to him before the expiry of that period¹⁷.

1 As to references to initial notices see para 356 note 1 ante.

2 As to amendment notices see para 358 ante.

3 Ie by the Building Regulations 2000, SI 2000/2531, Sch 1 para H4: see para 308 ante.

4 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 13A(1) (reg 13A added by SI 2001/3336).

5 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 13A(2)(a) (as added: see note 4 supra).

6 Ibid reg 13A(2)(b) (as added: see note 4 supra).

7 As to plans certificates see para 365 ante.

8 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 13A(2)(c) (as added: see note 4 supra).

- 9 Ibid reg 13A(2)(d) (as added: see note 4 supra). As to final certificates see para 366 ante.
- 10 As to references to the carrying out of work see para 355 note 4 ante.
- 11 le of the Building Regulations 2000, SI 2000/2531, Sch 1 para H4: see para 308 ante.
- 12 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 13A(3)(a) (as added: see note 4 supra).
- 13 Ibid reg 13A(3)(b) (as added: see note 4 supra).
- 14 le by ibid reg 13A(2) (as added): see the text and notes 5-9 supra.
- 15 Ibid reg 13A(4)(a) (as added: see note 4 supra).
- 16 For the meaning of 'day' see para 356 note 19 ante.
- 17 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 13A(4)(b) (as added: see note 4 supra).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/3. SUPERVISION/(2) SUPERVISION BY APPROVED INSPECTORS AND PUBLIC BODIES/(i) Supervision of Plans and Works by Approved Inspectors/B. SUPERVISION OF PLANS AND WORKS/(F) Energy Rating/369. Energy rating.

(F) ENERGY RATING

369. Energy rating.

Where a new dwelling¹ is created by building work² or by a material change of use³ in connection with which building work is carried out⁴, and the building work in question is the subject of an initial notice⁵, the person carrying out the building work must calculate the energy rating⁶ of the dwelling and give notice of that rating to the approved inspector who gave the initial notice⁷. The notice must be given not later than five days⁸ after completion of the dwelling, and

- 241 (1) where the dwelling is created by building work, and the dwelling is occupied, and no final certificate⁹ is given the notice must be given not later than the end of the period of eight weeks beginning with the date of occupation¹⁰; or
- 242 (2) where the dwelling is created by a material change of use in connection with which building work is carried out, and the change of use takes place and no final certificate is given, the notice must be given not later than the end of the period of eight weeks beginning with the date on which the change of use takes place¹¹.

The person carrying out the building work must affix, as soon as practicable, in a conspicuous place in the dwelling, a notice stating the energy rating of the dwelling¹². If, on the date the dwelling is first occupied as a residence, no notice has been affixed in the dwelling, the person carrying out the building work must give to the occupier of the dwelling a notice stating the energy rating of the dwelling¹³.

1 For these purposes, 'dwelling' includes a dwelling-house and a flat: Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 2(1).

2 For the meaning of 'building work' see para 308 ante; definition applied by ibid reg 2(1).

3 For the meaning of 'material change of use' see para 309 ante; definition applied by ibid reg 2(1).

4 As to references to the carrying out of work see para 355 note 4 ante.

5 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 12(1). As to references to initial notices see para 356 note 1 ante.

6 For these purposes, 'energy rating' of a dwelling means a numerical indication of the overall energy efficiency of that dwelling obtained by the application of a procedure approved by the Secretary of State under the Building Regulations 2000, SI 2000/2531, reg 16(2) (see para 328 ante): Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 2(1).

7 Ibid reg 12(2). As to the penalty for contravention of reg 12 see the Building Act 1984 s 35; the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 31; and para 343 ante. Where building work is supervised by a local authority, the person carrying out the work must give notice of the energy rating to it: see para 328 ante.

8 For the meaning of 'day' see para 356 note 19 ante.

9 As to final certificates see para 366 ante.

10 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 12(3)(a).

11 Ibid reg 12(3)(b).

12 Ibid reg 12(4). The notice referred to in reg 12(4) must be affixed not later than five days after completion of the dwelling, and, in a case where reg 12(3)(b) (see head 2 in the text) applies, not later than the period of eight weeks beginning with the date on which the change of use takes place: reg 12(5). The provisions of reg 12(4), (6) (see the text to note 13 *infra*) do not apply in a case where the person carrying out the work intends to occupy, or occupies, the dwelling as a residence: reg 12(8).

13 Ibid reg 12(6). The notice referred to in reg 12(6) must be given not later than five days after completion of the dwelling, and, in a case where reg 12(3)(a) (see head (1) in the text) applies, not later than the end of the period of eight weeks beginning with the date of occupation of the dwelling: reg 12(7). See note 12 *supra*.

UPDATE

369-372 Energy rating ... Effect of public body's notice

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/3. SUPERVISION/(2) SUPERVISION BY APPROVED INSPECTORS AND PUBLIC BODIES/(i) Supervision of Plans and Works by Approved Inspectors/B. SUPERVISION OF PLANS AND WORKS/(F) Energy Rating/369A. Sound insulation testing.

369A. Sound insulation testing.

The following provisions come into force on 1 July 2003 except in so far as they require the carrying out of sound insulation testing in relation to the erection of a dwelling house or a building containing flats, in which case they come into force on 1 July 2004: SI 2002/2872 (amended by SI 2003/3133).

The person carrying out (1) building work¹ in relation to which a requirement is imposed²; and (2) work which is required³ to be carried out to a building to ensure that it complies with the requirement under head (1) above, which is the subject of an initial notice⁴ must, for the purpose of ensuring compliance with that requirement, (a) ensure that appropriate sound insulation testing is carried out in accordance with a procedure approved by the Secretary of State; and (b) give a copy of the results of such testing to the approved inspector⁵ who gave the initial notice⁶. The results of the testing under head (a) above must be recorded in a manner approved by the Secretary of State, and given to the approved inspector in accordance with head (b) above not later than five days after completion of the work to which the initial relates⁷.

1 For the meaning of 'building work' see PARA 308.

2 Ie by the Building Regulations 2000, SI 2000/2531, Sch 1 para E1: see PARA 308.

3 Ie by virtue of ibid reg 6(1)(e) (see PARA 309 head (e)) or (2)(b) (see PARA 309 head (ii)).

4 As to initial notices see PARA 356 et seq.

5 As to approved inspectors see PARA 354.

6 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 12A(1), (2) (reg 12A added by SI 2002/2872). In certain circumstances, there is no requirement for sound insulation testing: SI 2000/2532, reg 12A(4) (added by SI 2004/1466).

7 SI 2000/2532 reg 12A(3) (reg 12A as added: see NOTE 6). As to the penalty for contravention of reg 12A see the Building Act 1984 s 35; SI 2000/2532 reg 31; and PARA 343.

UPDATE

369-372 Energy rating ... Effect of public body's notice

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/3. SUPERVISION/(2) SUPERVISION BY APPROVED INSPECTORS AND PUBLIC BODIES/(i) Supervision of Plans and Works by Approved Inspectors/B. SUPERVISION OF PLANS AND WORKS/(F) Energy Rating/369B. Pressure testing.

369B. Pressure testing.

The person carrying out building work¹ in relation to which a requirement is imposed², and which is the subject of an initial notice³, must, for the purpose of ensuring compliance with that requirement⁴, (1) ensure that (a) pressure testing is carried out in such circumstances as are approved by the Secretary of State; and (b) the testing is carried out in accordance with a procedure approved by the Secretary of State; and (2) give notice of the results of the testing to the approved inspector who gave the initial notice⁵. The notice referred to in head (2) above, must (i) record the results and the data upon which they are based in a manner approved by the Secretary of State; and (ii) be given to the approved inspector not later than seven days after the final test is carried out⁶. An approved inspector⁷ is authorised to accept, as evidence that the requirements of head (1)(b) above, have been satisfied, a certificate to that effect by a person who is registered by the British Institute of Non-destructive Testing in respect of pressure testing for the air tightness of buildings⁸. Where such a certificate contains the information required by head (i) above, head (2) above, does not apply⁹.

1 For the meaning of 'building work' see PARA 308.

2 le by the Building Regulations 2000, SI 2000/2531, Sch 1 para L1(a)(i): see PARA 308.

3 As to initial notices see PARA 356 et seq.

4 And also with SI 2000/2531 reg 17C (see PARA 328A.1).

5 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532 reg 12B(1), (2) (reg 12B added by SI 2006/652).

6 SI 2000/2532 reg 12B(3) (reg 12 B as added: see NOTE 5).

7 As to approved inspectors see PARA 354.

8 SI 2000/2532 reg 12B(4) (reg 12 B as added: see NOTE 5).

9 Ibid reg 12B(5) (reg 12B as added: see NOTE 5).

UPDATE

369-372 Energy rating ... Effect of public body's notice

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/3. SUPERVISION/(2) SUPERVISION BY APPROVED INSPECTORS AND PUBLIC BODIES/(i) Supervision of Plans and Works by Approved Inspectors/B. SUPERVISION OF PLANS AND WORKS/(F) Energy Rating/369C. Commissioning.

369C. Commissioning.

The person carrying out building work¹ in relation to which a requirement is imposed², and which is the subject of an initial notice³ must, for the purpose of ensuring compliance with that requirement, give to the approved inspector⁴ a notice confirming that the fixed building services⁵ have been commissioned in accordance with a procedure approved by the Secretary of State⁶. The notice must be given to the approved inspector not later than five days after completion of the work to which the initial notice relates⁷.

1 For the meaning of 'building work' see PARA 308.

2 Ie by the Building Regulations 2000, SI 2000/2531, Sch 1 para L1(b): see PARA 308.

3 As to initial notices see PARA 356 et seq.

4 As to approved inspectors see PARA 354.

5 For the meaning of 'fixed building services' see PARA 308.

6 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 12C(1), (2) (reg 12C added by SI 2006/652). SI 2000/2532 reg 12C does not apply to the provision or extension of any fixed building service where testing and adjustment is not possible or would not affect the energy efficiency of that fixed building service: reg 12C(1) (substituted by SI 2007/3384).

7 SI 2000/2532 reg 12C(3) (substituted by SI 2007/3384). Where SI 2000/2532 reg 11A applies, the notice must be given not later than the date on which the notice or certificate required by that regulation must be given: reg 12C(4) (added by SI 2007/3384). Where SI 2000/2532 reg 18 applies, the notice must be given not later than the date on which the initial notice ceases to be in force or, if earlier, the end of the period referred to in reg 12C(3): reg 12C(5) (added by SI 2007/3384).

UPDATE

369-372 Energy rating ... Effect of public body's notice

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/3. SUPERVISION/(2) SUPERVISION BY APPROVED INSPECTORS AND PUBLIC BODIES/(i) Supervision of Plans and Works by Approved Inspectors/B. SUPERVISION OF PLANS AND WORKS/(F) Energy Rating/369D. CO emission rate calculations.

369D. CO₂ emission rate calculations.

Where the requirement as to target CO₂ emission rates¹ applies to work which is the subject of an initial notice², the person carrying out the work must give the approved inspector³ a notice which specifies the target CO₂ emission rate for the building and the calculated CO₂ emission rate for the building as constructed⁴. The notice must be given to the approved inspector no later than five days after the work has been completed, or the date on which the initial notice ceases to be in force, whichever is the earlier⁵.

1 le the Building Regulations 2000, SI 2000/2531, reg 17C (see PARA 328A.1).

2 As to initial notices see PARA 356 et seq.

3 As to approved inspectors see PARA 354.

4 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 12D(1) (reg 12D added by SI 2006/652).

5 SI 2000/2532 reg 12D(2) (reg 12D as added (see NOTE 4); and substituted by SI 2008/2363). The notice referred to is the notice required by SI 2000/2532 reg 12B (see PARA 369B). An approved inspector is authorised to accept, as evidence that the requirements of reg 17C would be satisfied if the building were constructed in accordance with an accompanying list of specifications, a certificate to that effect by an energy assessor as defined in reg 17J who is accredited to produce such certificates for that category of building: reg 12D(3). Where such a certificate is given to the approved inspector (1) SI 2000/2532 reg 12D(1) does not apply; and (2) the person carrying out the work must provide to the approved inspector not later than five days after the work has been completed, or the date on which, in accordance with reg 18, the initial notice ceases to be in force, whichever is the earlier a notice which (a) states whether the building has been constructed in accordance with the list of specifications which accompanied the certificate; and (b) if it has not, lists any changes to the specifications to which the building has been constructed: reg 12D(4) (amended by SI 2008/2363).

UPDATE

369-372 Energy rating ... Effect of public body's notice

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/3. SUPERVISION/(2) SUPERVISION BY APPROVED INSPECTORS AND PUBLIC BODIES/(i) Supervision of Plans and Works by Approved Inspectors/B. SUPERVISION OF PLANS AND WORKS/(F) Energy Rating/369E. Wholesome water consumption calculation.

369E. Wholesome water consumption calculation.

Where the requirement as to water efficiency of new dwellings¹ applies to work which is the subject of an initial notice², the person carrying out the work must give the approved inspector³ a notice which specifies the potential consumption of wholesome water per person per day calculated in accordance with the methodology referred to in relation to the completed dwelling⁴. The notice must be given to the approved inspector not later than five days after the work has been completed or the date on which the initial notice ceases to be in force, whichever is the earlier⁵.

1 le the Building Regulations 2000, SI 2000/2531, reg 17K (see PARA 328C).

2 As to initial notices see PARA 356 et seq.

3 As to approved inspectors see PARA 354.

4 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 12E(1) (reg 12E added by SI 2009/1219); and see PARA 328C as to the methodology.

5 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532 reg 12E(2).

UPDATE

369-372 Energy rating ... Effect of public body's notice

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/3. SUPERVISION/(2) SUPERVISION BY APPROVED INSPECTORS AND PUBLIC BODIES/ (ii) Supervision by Public Bodies of their own Work/A. APPROVAL OF PUBLIC BODIES/370. Approval of public bodies.

(ii) Supervision by Public Bodies of their own Work

A. APPROVAL OF PUBLIC BODIES

370. Approval of public bodies.

If it appears to the Secretary of State¹ that:

- 243 (1) public bodies of a certain description should be enabled to supervise² their own work³; or
- 244 (2) that a public body should be approved for the purpose of supervising its own work⁴,

the Secretary of State must approve that description of body or, as the case may be, that body in writing and take such steps as appear to them appropriate to inform those local authorities and public bodies which will be affected by the giving of the approval⁵. The Secretary of State may withdraw the approval by a notice in writing given to any public body affected, and must take such steps as appear to him appropriate to inform local authorities of such withdrawal⁶.

¹ This provision applies, in England, to the Secretary of State, and in Wales to the National Assembly: Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 21(1). As to the Secretary of State see para 301 note 3 ante. As to the functions exercisable by the National Assembly for Wales see para 301 note 3 ante. 'England' means, subject to any alteration of boundaries under the Local Government Act 1972 Pt IV (ss 53-78) (as amended), the area consisting of the counties established by s 1 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 5, 24, 27), Greater London and the Isles of Scilly: Interpretation Act 1978 s 5, Sch 1. As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) para 29. 'Wales' means the combined area of the counties which were created by the Local Government Act 1972 s 20 (as substituted) (see LOCAL GOVERNMENT vol 69 (2009) PARAS 5, 37, 41), but subject to any alteration made under s 73 (as amended) (consequential alteration of boundary following alteration of watercourse) (see LOCAL GOVERNMENT vol 69 (2009) PARA 90): Interpretation Act 1978 Sch 1 (definition substituted by the Local Government (Wales) Act 1994 s 1(3), Sch 2 para 9).

² ie under the Building Act 1984 s 54: see para 371 post. As to supervision of works by local authorities see para 352 ante. As to supervision of plans and works by approved inspectors see para 354 et seq ante.

³ Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 21(1)(a).

⁴ Ibid reg 21(1)(b).

⁵ Ibid reg 21(1).

⁶ Ibid reg 21(2).

UPDATE

369-372 Energy rating ... Effect of public body's notice

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/3. SUPERVISION/(2) SUPERVISION BY APPROVED INSPECTORS AND PUBLIC BODIES/ (ii) Supervision by Public Bodies of their own Work/B. SUPERVISION OF PLANS AND WORKS/(A) Public Body's Notice/371. Giving and acceptance of public body's notice.

B. SUPERVISION OF PLANS AND WORKS

(A) PUBLIC BODY'S NOTICE

371. Giving and acceptance of public body's notice.

Where a public body¹:

- 245 (1) intends to carry out in relation to a building² belonging to it work³ to which the substantive requirements⁴ of building regulations apply⁵;
- 246 (2) considers that the work can be adequately supervised by its own servants or agents⁶; and
- 247 (3) gives to the local authority⁷ in whose district the work is to be carried out notice in the prescribed⁸ form (referred to as a 'public body's notice') together with such plans⁹ of the work as may be prescribed¹⁰,

then the following principles apply.

A public body's notice is of no effect unless it is accepted by the local authority to whom it is given, and that local authority may not reject the notice except on prescribed grounds¹¹, but must reject the notice if any of the prescribed grounds exists¹². In a case where the work to which the public body's notice relates is work of such a description that, if plans of it had been deposited with the local authority, the authority could, under an enactment, have imposed requirements as a condition of passing the plans¹³, the local authority may impose the like requirements as a condition of accepting the public body's notice¹⁴. Unless, within the prescribed period¹⁵, the local authority to whom a public body's notice is given gives notice of rejection, specifying the ground or grounds in question, the authority is conclusively presumed to have accepted the public body's notice and to have done so without imposing any such requirements¹⁶.

A public body's notice comes into force when it is accepted by the local authority, either by notice given within the prescribed period to the public body by which it was given or by virtue of¹⁷ the local authority not giving a notice of rejection within the prescribed period, and continues¹⁸ in force until the occurrence of, or the expiry of a prescribed period of time beginning on the date of such event as may be prescribed¹⁹.

A person aggrieved²⁰ by the local authority's rejection of a public body's notice may appeal to a magistrates' court²¹ acting for the petty sessions area in which is situated land on which there will be, or there has been, carried out any work to which the notice relates²². On such an appeal the court must, if it determines that the notice was properly rejected, confirm the rejection²³, and in any other case, give a direction to the local authority to accept the notice²⁴. Where a person is aggrieved by such a determination, confirmation, direction or other decision of a magistrates' court, he may appeal to the Crown Court²⁵.

1 References in the Building Act 1984 Pt II (ss 47-58) (as amended) (see para 356 et seq ante) to a public body are references to a body, corporate or unincorporated, that acts under an enactment for public purposes and not for its own profit and is, or is of a description that is, approved by the Secretary of State in accordance with building regulations: see ss 54(1), 58(1). As to the meaning of 'enactment' see para 305 note 2 ante. For

the meaning of 'building regulations' see para 306 ante. As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante. As to the approval of public bodies see para 370 ante.

2 For the meaning of 'building' see para 305 ante.

3 As to references to the carrying out of work see para 354 note 20 ante.

4 For the meaning of 'substantive requirements' see para 311 note 6 ante.

5 Building Act 1984 s 54(1)(a).

6 Ibid s 54(1)(b). As to supervision of works by local authorities see para 352 ante. As to supervision of plans and works by approved inspectors see para 354 et seq ante.

7 For the meaning of 'local authority' see para 301 note 12 ante.

8 Ie prescribed by building regulations: see the Building Act 1984 s 126. A public body's notice may be incorporated into a combined form together with a public bodies plans certificate, and references in s 54 to a public body's notice include a reference to the combined form: see s 54, Sch 4 para 2(2)(a); and para 375 post. The local authority is required to keep a register of initial notices: see s 56(1); and para 380 post. The register is open to public inspection: see s 56(4); and para 380 post.

For the prescribed form of a public body's notice which is not combined with a public body's plans certificate see the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 22(1)(a), Sch 2 Form 9 (amended by SI 2001/3336). For the prescribed form of a public body's notice which is combined with a public body's plans certificate see the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 22(1)(b), Sch 2 Form 11 (amended by SI 2001/3336). As to a public body's plans certificate see para 375 post. For transitional provisions where a public body's notice has been given before 1 January 2001 see the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 32, Sch 1.

The form prescribed for a public body's notice may be such as to require the public body by whom it is to be given: (1) to furnish information relevant for the purposes of the Building Act 1984, the Public Health Act 1936 Pt II (ss 33-90) (as amended) or Pt IV (ss 124-141) (as amended) of or any provision of building regulations; and (2) to enter into undertakings with respect to consultation and other matters: Building Act 1984 s 54(5). The provisions in the Public Health Act 1936 relating to building regulations were repealed by the Building Act 1984 s 133(2), Sch 7.

9 As to the meaning of 'plans' see para 307 note 8 ante. A public body's notice must be accompanied by the plans and documents described in the relevant form prescribed by the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 22(1) (see note 8 supra): reg 22(2).

10 Building Act 1984 ss 54(1)(c), 58(1).

11 Ibid s 54(2)(a). As to the prescribed grounds on which a local authority must reject a public body's notice see the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 22(3), Sch 6 (amended by SI 2001/3336).

12 Building Act 1984 s 54(2)(b).

13 As to the power of a local authority to impose conditions on passing plans see ibid s 16(2)-(4); and para 329 ante.

14 Ibid s 54(2).

15 The period within which a local authority may give notice of rejection of a public body's notice is 10 days beginning with the day on which the notice is given: Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 22(4).

16 Building Act 1984 s 54(3).

17 Ie by virtue of ibid s 54(3): see the text and notes 15-16 supra.

18 Ie subject to ibid Sch 4 para 3(3): see para 376 post.

19 Ibid s 54(6), Sch 4 para 1(1). Building regulations may empower a local authority to extend, whether before or after its expiry, any such period of time as is referred to in Sch 4 para 1(1): Sch 4 para 1(2). As to events causing a public body's notice to cease to be in force see para 373 post.

- 20 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARA 656.
- 21 See generally MAGISTRATES. As to appeals generally see paras 422-423 post.
- 22 Building Act 1984 s 55(1).
- 23 Ibid s 55(2)(a).
- 24 Ibid s 55(2)(b).
- 25 Ibid s 55(3).

UPDATE

369-372 Energy rating ... Effect of public body's notice

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

371-372 Giving and acceptance of public body's notice ... Effect of public body's notice

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

371 Giving and acceptance of public body's notice

NOTE 11--SI 2000/2532 Sch 6 further amended: SI 2004/3168 (England), SI 2005/2929 (Wales).

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372. Effect of public body's notice.

So long as a public body's notice¹ continues in force, the function² of enforcing building regulations³ that is conferred on a local authority⁴ is not exercisable in relation to the work to which the notice relates, and accordingly a local authority may not give a notice to remove or alter work contravening building regulations⁵ in relation to that work⁶, and a local authority may not institute proceedings⁷ for a contravention⁸ of building regulations that arises out of the carrying out of that work⁹.

In relation to the removal or alteration of work contravening building regulations¹⁰ and in relation to securing payment of the expenses of the execution of street works in private streets adjacent to new buildings under the advance payments code¹¹, special provision is made with respect to the effect of a public body's notice¹². The giving of a public body's notice accompanied by such plans as may be prescribed to accompany the public body's notice¹³ is to be treated as the deposit of plans¹⁴, and plans accompanying a public body's notice are to be treated as the deposited plans¹⁵. Acceptance or rejection of a public body's notice is to be treated as the passing or, as the case may be, the rejection of plans¹⁶.

Special provision is also made¹⁷ with respect to the effect of a public body's notice in relation to the exercise of a fire authority's¹⁸ powers where provisions of building regulations as to means of escape apply¹⁹. The acceptance by a local authority of a public body's notice relating to any work is to be treated as the deposit of plans of the work with the authority in accordance with building regulations²⁰, and references²¹ to matters or circumstances of which particulars are not or were not required by or under the building regulations to be supplied to the local authority in connection with the deposit of plans are to be construed as references to matters or circumstances of which particulars would not be or, as the case may be, would not have been required to be so supplied if plans were to be or had been deposited with the authority in accordance with building regulations²².

1 For the meaning of 'public body's notice' see para 371 ante.

2 As to the meaning of 'functions' see para 303 note 19 ante.

3 For the meaning of 'building regulations' see para 306 ante.

4 Ie by the Building Act 1984 s 91(2) (as amended) (see para 352 ante). For the meaning of 'local authority' see para 301 note 12 ante.

5 Ie under *ibid* s 36(1): see para 344 ante.

6 *Ibid* s 48(1)(a) (amended by the Deregulation (Building) (Initial Notices and Final Certificates) Order 1996, SI 1996/1905, arts 3(1), (3), 5, in relation to initial notices which came into force on or after 14 October 1996), Building Act 1984 s 54(4).

7 Ie under *ibid* s 35: see para 343 ante.

8 As to the meaning of 'contravention' see para 310 note 10 ante.

9 Building Act 1984 s 48(1)(b) (as amended: see note 6 supra), s 54(4). As to references to the carrying out of work see para 354 note 20 ante.

10 le under *ibid* s 36(2) (see para 344 ante), s 36(5) (see para 344 ante) in so far as it relates to a notice under s 36(2) and to non-compliance with any such requirement as is referred to in s 36(2), and s 36(6) (see para 344 ante) in so far as it relates to a contravention of the Building Act 1984: ss 48(3)(a)-(c), 54(4).

11 le under the Highways Act 1980 ss 219-225 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) para 179 et seq): Building Act 1984 ss 48(3)(e), 54(4).

12 See *ibid* s 48 (as amended), s 54.

13 le such plans as are referred to in *ibid* s 54(1)(c) (see para 371 ante). As to the meaning of 'plans' see para 307 note 8 ante.

14 *Ibid* ss 48(2)(a), 54(4).

15 *Ibid* ss 48(2)(b), 54(4).

16 *Ibid* ss 48(2)(c), 54(4).

17 See *ibid* s 48 (as amended), s 54.

18 For these purposes, 'fire authority' has the same meaning as in the Fire Precautions Act 1971 s 43(1) (see FIRE SERVICES vol 18(2) (Reissue) para 17): Building Act 1984 s 126.

19 le under the Fire Precautions Act 1971 s 9D (as added) (see FIRE SERVICES vol 18(2) (Reissue) para 90) and s 13 (as amended) (see FIRE SERVICES vol 18(2) (Reissue) para 113).

20 Building Act 1984 s 48(4)(a) (amended by the Fire Safety and Safety of Places of Sport Act 1987 s 7(4)), Building Act 1984 s 54(4).

21 le references in the Fire Precautions Act 1971 s 9D(4)(b) (as added), s 13(1)(ii), (3)(b).

22 Building Act 1984 s 48(4)(b) (amended by the Fire Safety and Safety of Places of Sport Act 1987 s 7(4)), Building Act 1984 s 54(4).

UPDATE

369-372 Energy rating ... Effect of public body's notice

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

371-372 Giving and acceptance of public body's notice ... Effect of public body's notice

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

372 Effect of public body's notice

NOTES 18, 19, 21--Now 'fire and rescue authority': 1984 Act s 126 (definition amended by the 2004 Act Sch 1 para 57(2), (3)(i)). 1971 Act replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

TEXT AND NOTE 18--Reference to a fire authority is now to a fire and rescue authority: 1984 Act s 48(4) (amended by the Fire and Rescue Services Act 2004 Sch 1 para 57(2), (3)(c)).

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(B) CESSATION OF EFFECT OF PUBLIC BODY'S NOTICE

373. Events causing initial notice to cease to be in force.

Where a public body's final certificate¹ given in respect of work described in a public body's notice² is rejected, the public body's notice ceases to be in force in relation to the work described in the public body's final certificate on the expiry of a period of four weeks beginning with the date on which notice of rejection is given³.

Where work described in a public body's notice includes the erection, extension or material alteration⁴ of a building⁵, and the building or, as the case may be, the extension or any part of the building which has been materially altered is occupied⁶, and no public body's final certificate is given⁷, the public body's notice ceases to be in force in relation to the building, extension or part of a building which is occupied:

- 248 (1) if the building is to be put to a relevant use⁸, on the expiry of a period of four weeks beginning with the date of occupation⁹; and
- 249 (2) in any other case, on the expiry of a period of eight weeks beginning with the date of occupation¹⁰.

Where work described in a public body's notice involves a material change of use¹¹ of a building, and no public body's final certificate is given, and that change of use takes place, the public body's notice ceases to be in force in relation to that change of use on the expiry of a period of eight weeks beginning with the date on which the change of use takes place¹².

In any other case where no public body's final certificate is given, a public body's notice ceases to be in force on the expiry of a period of eight weeks beginning with the date on which the work described in the public body's notice is substantially completed¹³.

A local authority may extend any period referred to above either before or after its expiry¹⁴.

1 As to a public body's final certificate see para 376 post.

2 As to the giving of a public body's notice see para 371 ante.

3 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, regs 18(1), 28.

4 For the meaning of 'material alteration' see para 308 note 6 ante; definition applied by *ibid* reg 2(1).

5 For the meaning of 'building' see para 355 note 3 ante.

6 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, regs 18(2)(a), 28. A public body's notice will not cease to be in force by virtue of regs 18(2), 28 because part of a building or extension is occupied if a final certificate has been accepted in respect of that part: regs 18(5), 28.

7 *Ibid* regs 18(2)(b), 28. See note 6 supra.

8 For the meaning of 'a relevant use' see para 367 note 3 ante; definition applied by *ibid* regs 18(2)(i), 28.

9 *Ibid* regs 18(2)(i), 28. See note 6 supra.

- 10 Ibid regs 18(2)(ii), 28. See note 6 *supra*.
- 11 For the meaning of 'material change of use' see para 309 *ante*; definition applied by *ibid* reg 2(1).
- 12 Ibid regs 18(3), 28.
- 13 Ibid regs 18(4), 28.
- 14 Ibid regs 18(6), 28.

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374. Effects of public body's notice ceasing to be in force.

Where a public body's notice¹ ceases² to be in force³, building regulations⁴ may provide that if:

- 250 (1) a public body's plans certificate⁵ was given before the day on which the public body's notice ceased to be in force⁶; and
- 251 (2) that certificate was accepted by the local authority⁷, before, on or after that day⁸; and
- 252 (3) before that day, that acceptance was not rescinded by a notice⁹,

then, with respect to the work specified in the certificate, such of the functions¹⁰ of a local authority¹¹ as may be prescribed¹² for these purposes either are not exercisable or are exercisable only in prescribed circumstances¹³.

If, before the day on which the public body's notice ceased to be in force, a public body's final certificate¹⁴ was given in respect of part of the work specified in the notice and that certificate was accepted by the local authority (before, on or after that day), then, despite the fact that the public body's notice has ceased to be in force, a local authority's functions in relation to enforcing building regulations are not exercisable in relation to that part of the work¹⁵.

For the purpose of enabling the local authority to perform its functions in relation to the enforcement of building regulations¹⁶ in relation to any part of the work not specified in a public body's plans certificate or final certificate, as the case may be, building regulations may require the local authority to be provided with plans¹⁷ that relate not only to that part but also to the part to which the certificate in question relates¹⁸.

1 For the meaning of 'public body's notice' see para 371 ante.

2 Ie by virtue of the Building Act 1984 s 54(6), Sch 4 para 1(1): see para 371 ante.

3 Ibid Sch 4 para 4(1). In any case where Sch 4 para 4 applies, the reference in s 36(4) (period within which a notice under s 36 may be given) (see para 344 ante) to the date of the completion of the work in question has effect, in relation to a notice under s 36(1) (notice to pull down or alter work which contravenes building regulations) (see para 344 ante), as if it were a reference to the date on which the public body's notice ceased to be in force: Sch 4 para 4(5).

4 For the meaning of 'building regulations' see para 306 ante.

5 For the meaning of 'public body's plans certificate' see para 375 post.

6 Building Act 1984 Sch 4 para 4(2)(a).

7 For the meaning of 'local authority' see para 301 note 12 ante.

8 Building Act 1984 Sch 4 para 4(2)(b).

9 Ibid Sch 4 para 4(2)(c). The text refers to a notice under Sch 4 para 2(6): see para 375 post.

10 As to the meaning of 'functions' see para 303 note 19 ante.

11 le referred to in the Building Act 1984 s 48(1) (as amended) (see para 357 ante). Any reference in Sch 4 para 4(1)-(6) to s 48(1) (as amended) is a reference to s 48 (as amended) (see para 357 ante) as applied by s 54(2) (see para 371 ante): Sch 4 para 4(7).

12 le prescribed by building regulations: see *ibid* s 126.

13 *Ibid* Sch 4 para 4(2). Subject to any provision of building regulations made by virtue of Sch 4 para 4(2), if, before the public body's notice ceased to be in force, an offence under s 35 (penalty for contravention of building regulations) (see para 343 ante) was committed with respect to any of the work specified in that notice, summary proceedings for that offence may be commenced by the local authority at any time within six months beginning with the day on which the functions of the local authority referred to in s 48(1) (as amended) (see para 357 ante) became exercisable with respect to the provision of building regulations to which the offence relates: Sch 4 para 4(6). See note 11 *supra*.

14 For the meaning of 'public body's final certificate' see para 376 post.

15 See the Building Act 1984 Sch 4 paras 3(3), 4(3).

16 le referred to in *ibid* s 48(1) (as amended): see para 357 ante. See note 11 *supra*.

17 As to the meaning of 'plans' see para 307 note 8 ante.

18 Building Act 1984 Sch 4 para 4(4) (which is expressed to be notwithstanding anything in Sch 4 para 4(2), (3) (see the text and notes 4-15 *supra*)).

UPDATE

374-377 Effects of public body's notice ceasing to be in force ... Requirements as to consultation

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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(C) PUBLIC BODY'S PLANS CERTIFICATE

375. Public body's plans certificate.

Where a public body¹:

- 253 (1) is satisfied that plans² of the work specified in a public body's notice³ given by it have been inspected by a servant or agent of the body who is competent to assess the plans⁴;
- 254 (2) in the light of that inspection is satisfied that the plans neither are defective nor show that work carried out⁵ in accordance with them would contravene⁶ any provision of building regulations⁷; and
- 255 (3) has complied with any prescribed⁸ requirements as to consultation or otherwise⁹,

the body may give to the local authority¹⁰ a certificate in the prescribed form ('public body's plans certificate')¹¹. A public body's plans certificate may relate either to the whole or to part only of the work specified in the public body's notice concerned¹², and does not have effect unless it is accepted by the local authority to whom it is given¹³.

A local authority to whom a public body's plans certificate is given may not reject the certificate except on prescribed grounds¹⁴, but must reject the certificate if any of the prescribed grounds exists¹⁵. Unless, within the prescribed period, the local authority to whom a public body's plans certificate is given gives notice of rejection¹⁶, specifying the ground or grounds in question, to the public body by which the certificate was given, the authority is conclusively presumed to have accepted the certificate¹⁷.

A person aggrieved¹⁸ by the local authority's rejection of a public body's plans certificate may appeal to a magistrates' court¹⁹ acting for the petty sessions area in which is situated land on which there will be, or there has been, carried out any work to which the notice relates²⁰. On such an appeal the court must if it determines that the notice was properly rejected confirm the rejection²¹, and in any other case, give a direction to the local authority to accept the notice²². Where a person is aggrieved by such a determination, confirmation, direction or other decision of a magistrates' court, he may appeal to the Crown Court²³.

If it appears to a local authority by whom a public body's plans certificate has been accepted that the work to which the certificate relates has not been commenced within the period of three years beginning on the date on which the certificate was accepted, the authority may rescind its acceptance of the certificate by notice, specifying the ground or grounds in question, given to the public body²⁴.

If a public body's notice ceases to be in force²⁵ and the conditions²⁶ as to a public body's plans certificate being accepted and not rescinded are satisfied, the local authority may not give a notice²⁷ for the removal or alteration of work which contravenes building regulations, or institute proceedings²⁸ for a contravention of building regulations, in relation to any work which is described in the certificate and is carried out in accordance with the plans to which the certificate relates²⁹.

- 1 For the meaning of 'public body' see para 371 ante.
- 2 As to the meaning of 'plans' see para 307 note 8 ante.
- 3 For the meaning of 'public body's notice' see para 371 ante.
- 4 Building Act 1984 s 54(6), Sch 4 para 2(1)(a).
- 5 As to references to the carrying out of work see para 354 note 20 ante.
- 6 As to the meaning of 'contravene' see para 310 note 10 ante.
- 7 Building Act 1984 Sch 4 para 2(1)(b). For the meaning of 'building regulations' see para 306 ante.
- 8 Ie prescribed by building regulations: see *ibid* s 126.
- 9 *Ibid* Sch 4 para 2(1)(c). As to the prescribed requirements as to consultation see paras 377-379 post.
- 10 For the meaning of 'local authority' see para 301 note 12 ante.
- 11 Building Act 1984 s 58(1), Sch 4 para 2(1). Building regulations may authorise the giving of a public body's notice combined with a public body's plans certificate, and may prescribe a single form for such a combined notice and certificate: Sch 4 para 2(2). Where such a prescribed form is used a reference in Sch 4 or in any other provision of Pt II (ss 47-58) (as amended) (see para 356 et seq ante) to a public body's notice or to a public body's plans certificate includes a reference to that form: Sch 4 para 2(2)(a). However, should the form cease to be in force as a public body's notice by virtue of Sch 4 para 1(1) (see para 371 ante), nothing in Sch 4 para 1(1) affects the continuing validity of the form as a public body's plans certificate: Sch 4 para 2(2)(b). For the prescribed form of a public body's plans certificate which is not combined with a public body's notice see the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 24(a), Sch 2 Form 10 (amended by SI 2001/3336). For the prescribed form of a public body's plans certificate which is combined with a public body's notice see the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 24(b), Sch 2 Form 11 (amended by SI 2001/3336).
- 12 Building Act 1984 Sch 4 para 2(3)(a).
- 13 *Ibid* Sch 4 para 2(3)(b).
- 14 *Ibid* Sch 4 para 2(4)(a). As to the grounds on which a local authority must reject a public body's plans certificate see the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 25(1), Sch 7 (amended by SI 2001/3336). As to the grounds on which a local authority must reject a public body's plans certificate combined with a public body's notice see the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 25(2), Sch 6, Sch 7 (both amended by SI 2001/3336).
- 15 Building Act 1984 Sch 4 para 2(4)(b).
- 16 The period within which a local authority may give notice of rejection of a public body's plans certificate or combined notice and certificate is 10 days beginning on the day on which the certificate is given: Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 25(3).
- 17 Building Act 1984 Sch 4 para 2(5).
- 18 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARA 656.
- 19 See generally MAGISTRATES. As to appeals generally see paras 422-423 post.
- 20 Building Act 1984 s 55(1).
- 21 *Ibid* s 55(2)(a).
- 22 *Ibid* s 55(2)(b).
- 23 *Ibid* s 55(3).
- 24 *Ibid* Sch 4 para 2(6).
- 25 As to events causing a public body's notice to cease to be in force see para 373 ante.

- 26 le the conditions in the Building Act 1984 Sch 4 para 4(2).
- 27 le under *ibid* s 36(1): see para 344 ante.
- 28 le under *ibid* s 35: see para 343 ante.
- 29 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 26.

UPDATE

374-377 Effects of public body's notice ceasing to be in force ... Requirements as to consultation

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

375 Public body's plans certificate

NOTE 14--SI 2000/2532 Schs 6, 7 further amended: SI 2004/3168 (England), SI 2005/2929 (Wales).

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(D) PUBLIC BODY'S FINAL CERTIFICATE

376. Public body's final certificate.

Where a public body¹ is satisfied that any work specified in a public body's notice² given by it has been completed, the body may give to the local authority³ such certificate with respect to the completion of the work and compliance with building regulations⁴ as may be prescribed⁵ (a 'public body's final certificate')⁶. A public body's final certificate may relate either to the whole or to part only of the work specified in the public body's notice concerned⁷, and does not have effect unless it is accepted by the local authority to whom it is given⁸. A local authority to whom a public body's final certificate is given may not reject the certificate except on prescribed grounds⁹, but must reject the certificate if any of the prescribed grounds exists¹⁰. Unless, within the prescribed period, the local authority to whom a public body's final certificate is given gives notice of rejection¹¹, specifying the ground or grounds in question, to the public body by which the certificate was given, the authority is conclusively presumed to have accepted the certificate¹².

A person aggrieved¹³ by the local authority's rejection of a public body's final certificate may appeal to a magistrates' court¹⁴ acting for the petty sessions area in which is situated land on which there will be, or there has been, carried out any work to which the notice relates¹⁵. On such an appeal the court must if it determines that the notice was properly rejected confirm the rejection¹⁶, and in any other case, give a direction to the local authority to accept the notice¹⁷. Where a person is aggrieved by such a determination, confirmation, direction or other decision of a magistrates' court, he may appeal to the Crown Court¹⁸.

Where a public body's final certificate has been given with respect to any of the work specified in a public body's notice and that certificate has been accepted by the local authority concerned, the public body's notice ceases to apply to that work¹⁹.

1 For the meaning of 'public body' see para 371 ante.

2 For the meaning of 'public body's notice' see para 371 ante.

3 For the meaning of 'local authority' see para 301 note 12 ante.

4 For the meaning of 'building regulations' see para 306 ante.

5 I.e. prescribed by building regulations: see the Building Act 1984 s 126.

6 Ibid ss 54(6), 58(1), Sch 4 para 3(1). For the prescribed form of a public body's final certificate see the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 27(1), Sch 2 Form 12 (amended by SI 2001/3336).

7 Building Act 1984 Sch 4 paras 2(3)(a), 3(2).

8 Ibid Sch 4 paras 2(3)(b), 3(2).

9 Ibid Sch 4 paras 2(4)(a), 3(2). As to the grounds which have been prescribed see the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 27(1), Sch 8 (amended by SI 2001/3336).

10 Building Act 1984 Sch 4 paras 2(4)(b), 3(2).

11 The period within which a local authority may give notice of rejection of a public body's final certificate is 10 days beginning with the day on which the certificate is given: Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 27(2).

12 Building Act 1984 Sch 4 paras 2(5), 3(2).

13 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARA 656.

14 See generally MAGISTRATES. As to appeals generally see paras 422-423 post.

15 Building Act 1984 s 55(1).

16 Ibid s 55(2)(a).

17 Ibid s 55(2)(b).

18 Ibid s 55(3).

19 Ibid Sch 4 para 3(3). However, the provision which prohibits a local authority from exercising its functions of enforcing building regulations where a public body's notice is in force (ie s 48(1) (as amended) (see para 357 ante), as applied by s 54(4) (see para 372 ante)) continues by virtue of Sch 4 para 3(3) to apply in relation to that work as if the public body's notice continued in force in relation to it: Sch 4 para 3(3).

UPDATE

374-377 Effects of public body's notice ceasing to be in force ... Requirements as to consultation

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

376 Public body's final certificate

NOTE 9--SI 2000/2532 Sch 8 further amended: SI 2004/3168 (England), SI 2005/2929 (Wales).

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(E) CONSULTATION

377. Requirements as to consultation.

Building regulations¹ may make provision for requiring, in such circumstances as may be prescribed², a public body³ that has given a public body's notice⁴ to consult any prescribed person before taking any prescribed step in connection with any work specified in the notice⁵.

1 For the meaning of 'building regulations' see para 306 ante.

2 I.e. prescribed by building regulations: see the Building Act 1984 s 126. As to a public body's consultation with the fire authority see para 378 post. As to a public body's consultation with the sewerage undertaker see para 379 post.

3 For the meaning of 'public body' see para 371 ante.

4 For the meaning of 'public body's notice' see para 371 ante.

5 Building Act 1984 Sch 4 para 5.

UPDATE

374-377 Effects of public body's notice ceasing to be in force ... Requirements as to consultation

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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378. Public body's consultation with the fire authority.

Where a public body's notice¹ is to be given or has been given in relation to the erection, extension or material alteration² of a relevant building³ or in relation to building work in connection with a relevant change of use⁴ of a building and requirements as to fire safety are imposed⁵ in relation to the work⁶, the public body must consult the fire authority⁷:

- 256 (1) before or as soon as practicable after giving a public body's notice in relation to the work⁸;
- 257 (2) before or as soon as practicable after giving a relevant amendment notice⁹ in relation to the work¹⁰;
- 258 (3) before giving a public body's plans certificate¹¹, whether or not combined with a public body's notice¹²; and
- 259 (4) before giving a public body's final certificate¹³.

Where a public body is required to consult the fire authority, it must give to the fire authority:

- 260 (a) in a case where the public body is consulting the fire authority in connection with a public body's notice, sufficient plans to show whether the work would, if carried out in accordance with those plans, comply with the applicable requirements¹⁴ as to fire safety¹⁵; and
- 261 (b) in a case where the public body is consulting the fire authority in connection with the giving of a public body's plans certificate, a copy of the plans in relation to which it intends to give the certificate¹⁶.

Where a public body is required to consult the fire authority it must have regard to any views the fire authority expresses¹⁷, and the public body must not give a public body's plans certificate or a public body's final certificate until 15 days¹⁸ have elapsed from the date on which it consulted the fire authority, unless the fire authority has expressed its views to the public body before the expiry of that period¹⁹.

Where a local enactment would, if plans were deposited in accordance with building regulations, require the local authority to consult the fire authority before or during the carrying out of any work, the public body must consult the fire authority in a manner similar to that required by the enactment²⁰.

1 As to the giving of a public body's notice see para 371 ante.

2 For the meaning of 'material alteration' see para 308 note 6 ante; definition applied by the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 2(1).

3 For these purposes, a 'relevant building' is a building where it is intended that, after completion of building work, the building or any part of it will be put or will continue to be put to a relevant use: *ibid* regs 13(1), 23. For the meaning of 'building' see para 355 note 3 ante. For the meaning of 'building work' see para 308 ante; definition applied by reg 2(1). For these purposes, a 'relevant use' is a use as a workplace of a kind to which the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, Pt II (regs 3-6) (as amended) (see FIRE SERVICES vol 18(2) (Reissue) paras 133-135) applies or a use designated under the Fire Precautions Act 1971 s 1 (as

amended) (see FIRE SERVICES vol 18(2) (Reissue) para 83): Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, regs 13(1), 23.

4 For these purposes, 'relevant change of use' is a material change of use where it is intended that, after the change of use has taken place, the building or any part of it will be put or will continue to be put to a relevant use: *ibid* regs 13(1), 23. For the meaning of 'material change of use' see para 309 ante; definition applied by reg 2(1).

5 *Ie* by the Building Regulations 2000, SI 2000/2531, Sch 1 Pt B: see para 308 ante.

6 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, regs 13(2), 23.

7 For these purposes, 'fire authority' means the authority discharging in the area in which the premises are or are to be situated the functions of fire authority under the Fire Services Act 1947: Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 2(1). As to fire authorities see FIRE SERVICES vol 18(2) (Reissue) para 17.

8 *Ibid* regs 13(3)(a), 23.

9 For these purposes, a 'relevant amendment notice' is an amendment notice where any of the work specified in the public body's notice, as varied by the amendment notice, being work which could not have been carried out under the original notice ('additional work'), concerns the erection, extension or material alteration of a relevant building or is building work in connection with a relevant change of use of a building and the Building Regulations 2000, SI 2000/2531, Sch 1 Pt B (fire safety), imposes requirements in relation to the additional work: Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, regs 13(1), 23. As to references to the carrying out of work see para 355 note 4 ante.

10 *Ibid* regs 13(3)(b), 23.

11 As to a public body's plans certificate see para 375 ante.

12 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, regs 13(3)(c), 23.

13 *Ibid* regs 13(3)(d), 23. As to a public body's final certificate see para 376 ante.

14 *Ie* of the Building Regulations 2000, SI 2000/2531, Sch 1 Pt B: see para 308 ante.

15 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, regs 13(4)(a), 23.

16 *Ibid* regs 13(4)(b), 23.

17 *Ibid* regs 13(5)(a), 23.

18 For the meaning of 'day' see para 356 note 19 ante.

19 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, regs 13(5)(b), 23.

20 *Ibid* regs 13(6), 23.

UPDATE

378 Public body's consultation with the fire authority

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 3--1971 Act, SI 1997/1840 replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

TEXT AND NOTES 7, 14-20--References to a fire authority are now references to a fire and rescue authority: SI 2000/2523 regs 2(1), 13 (amended by SI 2004/3168 (England), SI 2005/2929 (Wales)). As to fire and rescue authorities see FIRE SERVICES.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/3. SUPERVISION/(2) SUPERVISION BY APPROVED INSPECTORS AND PUBLIC BODIES/ (ii) Supervision by Public Bodies of their own Work/B. SUPERVISION OF PLANS AND WORKS/ (E) Consultation/379. Public body's consultation with the sewerage undertaker.

379. Public body's consultation with the sewerage undertaker.

Where a public body's notice¹ is to be given or has been given in respect of work in relation to which requirements are imposed² relating to building over sewers³, the public body must consult the sewerage undertaker:

- 262 (1) before or as soon as practicable after giving a public body's notice in relation to the work⁴;
- 263 (2) before giving a public body's plans certificate⁵, whether or not combined with a public body's notice⁶; and
- 264 (3) before giving a public body's final certificate⁷.

Where a public body is required to consult the sewerage undertaker, it must give to the sewerage undertaker:

- 265 (a) in a case where it is consulting the sewerage undertaker in connection with a public body's notice, sufficient plans to show whether the work would, if carried out⁸ in accordance with those plans, comply with the applicable requirements⁹ of the provision relating to building over sewers¹⁰; and
- 266 (b) in a case where it is consulting the sewerage undertaker in connection with the giving of a public body's plans certificate, a copy of the plans in relation to which it intends to give the certificate¹¹.

Where a public body is required¹² to consult the sewerage undertaker it must have regard to any views the sewerage undertaker expresses¹³, and it must not give a public body's plans certificate or a public body's final certificate until 15 days¹⁴ have elapsed from the date on which it consulted the sewerage undertaker, unless the sewerage undertaker has expressed its views to the public body before the expiry of that period¹⁵.

1 As to the giving of a public body's notice see para 371 ante.

2 Ie by the Building Regulations 2000, SI 2000/2531, Sch 1 para H4: see para 308 ante.

3 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 13A(1) (reg 13A added by SI 2001/3336), Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 23A (added by SI 2001/3336).

4 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, regs 13A(2)(a), 23A (both as added: see note 3 supra).

5 As to a public body's plans certificate see para 375 ante.

6 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, regs 13A(2)(c), 23A (both as added: see note 3 supra).

7 Ibid regs 13A(2)(d), 23A (both as added: see note 3 supra). As to a public body's final certificate see para 376 ante.

8 As to references to the carrying out of work see para 355 note 4 ante.

9 le of the Building Regulations 2000, SI 2000/2531, Sch 1 para H4: see para 308 ante.

10 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, regs 13A(3)(a), 23A (both as added: see note 3 supra).

11 Ibid regs 13A(3)(b), 23A (both as added: see note 3 supra).

12 le by ibid regs 13(2), 23A (both as added): see the text and notes 4-7 supra.

13 Ibid regs 13A(4)(a), 23A (both as added: see note 3 supra).

14 For the meaning of 'day' see para 356 note 19 ante.

15 Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, regs 13A(4)(b), 23A (both as added: see note 3 supra).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/3. SUPERVISION/(2) SUPERVISION BY APPROVED INSPECTORS AND PUBLIC BODIES/(iii) Recording and Furnishing of Information/380. Recording and furnishing of information.

(iii) Recording and Furnishing of Information

380. Recording and furnishing of information.

Every local authority¹ must keep, in such manner as may be prescribed², a register containing such information as may be prescribed with respect to initial notices³, amendment notices⁴, notices indicating a change in the person intending to carry out the work⁵, public bodies' notices⁶ and certificates⁷ given to it, including information, where applicable, as to whether such notices or certificates have been accepted or rejected⁸. The information that may be so prescribed with respect to an initial notice or amendment notice includes information about the insurance cover provided with respect to the work to which the notice relates⁹. Every such register must be available for inspection by the public at all reasonable hours¹⁰.

Where an initial notice or a public body's notice has continued in force for any period, the local authority by whom it was accepted may require the approved inspector¹¹ or public body¹² by whom it was given to furnish it with any information that:

- 267 (1) it would have obtained itself if, during that period, its function¹³ of enforcing building regulations¹⁴ had continued to be exercisable in relation to the work to which the notice relates¹⁵; and
- 268 (2) it requires for the purpose of performing its duty¹⁶ in relation to reports and returns¹⁷.

1 For the meaning of 'local authority' see para 301 note 12 ante.

2 Ie prescribed by building regulations: see the Building Act 1984 s 126.

3 As to initial notices see para 356 ante.

4 As to amendment notices see para 358 ante.

5 Ie notices under the Building Act 1984 s 51C (as added); see para 360 ante.

6 For the meaning of 'public body's notice' see para 371 ante.

7 The reference in the Building Act 1984 s 56(1) (as amended) to certificates is a reference to plans certificates, final certificates, public bodies' plans certificates and public bodies' final certificates: s 56(3). For the meaning of 'plans certificate' see para 365 ante. As to final certificates see para 366 ante. For the meaning of 'public body's plans certificate' see para 375 ante. For the meaning of 'public body's final certificate' see para 376 ante.

8 Ibid s 56(1) (amended by the Deregulation (Building) (Initial Notices and Final Certificates) Order 1996, SI 1996/1905, arts 3(1), (9), 5, in relation to initial notices which came into force on or after 14 October 1996).

The register which local authorities must keep under the Building Act 1984 s 56 (as amended) must contain information as to:

- 28 (1) the description of the work to which the notice or certificate relates and of the location of the work (Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 30(2)(a));
- 29 (2) the name and address of any person who signed the notice or certificate (reg 30(2)(b));
- 30 (3) the name and address of the insurer who signed any declaration which accompanied the notice or certificate (reg 30(2)(c)); and

- 31 (4) the date on which the notice or certificate was accepted or was presumed to have been accepted (reg 30(2)(d)),

with respect to: (a) initial notices, amendment notices, notices under the Building Act 1984 s 51C (as added) (see para 360 ante) or public bodies' notices currently in force (Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 30(1)(a)); and (b) plans certificates, final certificates, public bodies' plans certificates and public bodies' final certificates, which have been accepted or are presumed to have been accepted (reg 30(1)(b), (3)). The information prescribed in heads (1)-(4) supra must be entered in the register as soon as practicable and in any event within 14 days of the occurrence to which it relates: reg 30(5). A register must include an index for enabling a person to trace any entry in the register by reference to the address of the land to which the notice or certificate relates: reg 30(4).

9 Building Act 1984 s 56(2) (amended by the Deregulation (Building) (Initial Notices and Final Certificates) Order 1996, SI 1996/1905, arts 3(1), (9), 5, in relation to initial notices which came into force on or after 14 October 1996).

10 Building Act 1984 s 56(4).

11 For the meaning of 'approved inspector' see para 354 ante.

12 For the meaning of 'public body' see para 371 ante.

13 As to the meaning of 'functions' see para 303 note 19 ante.

14 For the meaning of 'building regulations' see para 306 ante.

15 Building Act 1984 s 56(5)(a) (amended by the Deregulation (Building) (Initial Notices and Final Certificates) Order 1996, SI 1996/1905, arts 3(1), (9), 5, in relation to initial notices which came into force on or after 14 October 1996).

16 Ie under the Local Government Act 1972 s 230 (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 543). The Local Government Act 1972 s 230 (as amended) has effect as if during that period that function had continued to be so exercisable: see the Building Act 1984 s 56(5).

17 Ibid s 56(5)(b).

UPDATE

380-381 Recording and furnishing of information, Offences in relation to falsifying notices and certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

380 Recording and furnishing of information

TEXT AND NOTES 1-10-As from a day to be appointed, 1984 Act s 56(1)-(4) repealed: Sustainable and Secure Buildings Act 2004 Schedule.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/3. SUPERVISION/(2) SUPERVISION BY APPROVED INSPECTORS AND PUBLIC BODIES/(iv) Offences/381. Offences in relation to falsifying notices and certificates.

(iv) Offences

381. Offences in relation to falsifying notices and certificates.

A person is guilty of an offence if he gives a notice or certificate that purports to comply with the provisions relating to the supervision of building work otherwise than by local authorities¹, and that contains a statement that he knows to be false or misleading in a material particular². He is also guilty of an offence if he recklessly gives a notice or certificate that purports to comply with those requirements, and that contains a statement that is false or misleading in a material particular³.

A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum⁴ or imprisonment for a term not exceeding six months or both⁵, and on conviction on indictment to a fine or imprisonment for a term not exceeding two years or both⁶. Where an approved inspector⁷ is convicted of such an offence, the court by or before whom he is convicted must, within one month of the date of conviction, forward a certificate of the conviction to the person by whom the approval was given⁸.

1 le the requirements of the Building Act 1984 Pt II (ss 47-58) (as amended): see para 356 et seq ante.

2 Ibid s 57(1)(a).

3 Ibid s 57(1)(b).

4 As to the statutory maximum see para 329 note 24 ante.

5 Building Act 1984 s 57(2)(a).

6 Ibid s 57(2)(b).

7 For the meaning of 'approved inspector' see para 354 ante.

8 Building Act 1984 s 57(3).

UPDATE

380-381 Recording and furnishing of information, Offences in relation to falsifying notices and certificates

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

381 Offences in relation to falsifying notices and certificates

TEXT AND NOTE 1-Also, as from a day to be appointed, if he gives a notice or certificate that purports to comply with building regulations falling within the 1984 Act Sch 1 para 4A(1)(a) or (b) (certification of work) (see PARA 307): s 57(1)(a) (amended by the Sustainable and Secure Buildings Act 2004 s 8(4)).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/4. SPECIFIC BUILDING REQUIREMENTS/(1) DRAINAGE/382. Drainage of building.

4. SPECIFIC BUILDING REQUIREMENTS

(1) DRAINAGE

382. Drainage of building.

If it appears to a local authority¹ that in the case of a building:

- 269 (1) satisfactory provision has not been, and ought to be, made for drainage²;
- 270 (2) a cesspool³, private sewer⁴, drain⁵, soil pipe, rain water pipe, spout, sink or other necessary appliance provided for the building is insufficient or, in the case of a private sewer or drain communicating directly or indirectly with a public sewer⁶, is so defective as to admit subsoil water⁷;
- 271 (3) a cesspool or other such work or appliance mentioned in head (2) above provided for the building is in such a condition as to be prejudicial to health⁸ or a nuisance⁹; or
- 272 (4) a cesspool, private sewer or drain formerly used for the drainage of the building, but no longer used for it, is prejudicial to health or a nuisance¹⁰,

the local authority must by notice¹¹ require the owner¹² of the building¹³ to make satisfactory provision for the drainage of the building, or, as the case may be, require either the owner or the occupier of the building to do such work as may be necessary for renewing, repairing or cleansing the existing cesspool, sewer¹⁴, drain, pipe, spout, sink or other appliance, or for filling up, removing or otherwise rendering innocuous the disused cesspool, sewer or drain¹⁵.

This duty, so far as it empowers a local authority to take action in the cases mentioned in head (1) and head (2) above, does not apply in relation to a building belonging to statutory undertakers¹⁶, the Civil Aviation Authority or a person who holds a licence under the provisions relating to air traffic services¹⁷ and held or used by such a body or person for the purposes of that body's or that person's undertaking, unless it is¹⁸: (a) a house¹⁹; or (b) a building used as offices or showrooms and not forming part of a railway station or in the case of the Civil Aviation Authority not being on an aerodrome owned by the Authority²⁰.

1 For the meaning of 'local authority' see para 301 note 12 ante.

2 Building Act 1984 s 59(1)(a) (amended by the Building (Amendment) Regulations 2001, SI 2001/3335, reg 3(4)(a)). For these purposes, 'drainage' includes the conveyance, by means of a sink and any other necessary appliance, of refuse water and the conveyance of rainwater from roofs: Building Act 1984 s 59(6) (added by the Building (Amendment) Regulations 2001, SI 2001/3335, reg 3(4)(b); and renumbered by the Building (Amendment) Regulations 2002, SI 2002/440, reg 4).

As to the making of building regulations to modify or repeal the provisions of the Building Act 1984 s 59 (as amended), on the ground of inconsistency with other provisions, see s 1(3), Sch 1 para 11(1); and para 307 ante. The provisions of s 59 (as amended) do not apply to the Inner Temple or the Middle Temple: see s 88(1), Sch 3 para 6; and para 303 ante.

3 As to the meaning of 'cesspool' see para 307 note 42 ante.

4 For the meaning of 'private sewer' see para 334 note 6 ante.

5 For the meaning of 'drain' see para 333 note 10 ante.

6 For these purposes, 'public sewer' has the same meaning as in the Water Industry Act 1991 s 219(1) (see WATER AND WATERWAYS vol 100 (2009) PARA 138); Building Act 1984 s 126 (definition substituted by the Water Act 1989 s 190(1), (3), Sch 25 para 70(4), Sch 27 Pt I; and amended by the Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1 para 39(1), (6)).

7 Building Act 1984 s 59(1)(b).

8 'Prejudicial to health' means injurious, or likely to cause injury, to health: *ibid* s 126.

9 *Ibid* s 59(1)(c). As to nuisance generally see NUISANCE vol 78 (2010) PARA 101 et seq.

10 *Ibid* s 59(1)(d).

11 The provisions of *ibid* s 99 (content and enforcement of notice requiring works) (see para 409 post), and s 102 (appeal against notice requiring works) (see para 421 post) apply in relation to a notice given under s 59(1) (as amended): s 59(2).

12 For the meaning of 'owner' see para 310 note 2 ante.

13 The local authority may agree to do the work (*Hall v Batley Corp* (1877) 47 LJQB 148), but may be liable to the owner or occupier of the premises for defective work (*Hall v Batley Corp* supra; *Duke of Devonshire v St Mary, Islington, Vestry* (1895) 59 JP 745).

14 As to the meaning of 'sewer' see para 333 note 7 ante.

15 Building Act 1984 s 59(1). A local authority which had substituted a new sewer for an old one was not empowered to require an owner or occupier to make a new drain connecting with the new sewer: *St Marylebone Vestry v Viret* (1865) 19 CBNS 424; *St Martin-in-the-Fields Vestry v Ward* [1897] 1 QB 40, CA; see also *Austin v St Mary, Lambeth, Vestry* (1858) 27 LJ Ch 677 (power to prescribe make of pipe); *Lorden v Westminster Corp* (1909) 73 JP 126, DC (power to order additional vent pipe) (both cases being decided under local legislation relating to London). In *R v Paddington Vestry* (1891) 55 JP 52, it was held that action under a similar former London provision was obligatory upon the authority. An owner or occupier who, in compliance with such a notice, remedied a defective pipe which afterwards proved to be a sewer vested in the local authority, could recover the expenses from the authority: *Andrew v St Olave's Board of Works* [1898] 1 QB 775, DC. The position is now doubtful, as sewers vest in the sewerage undertaker. If an occupier of a house so remedies a defect which it is the duty of an owner to remedy, he may recover the expenses from the owner: *Gebhardt v Saunders* [1892] 2 QB 452, DC.

The provisions of the Building Act 1984 s 21(4), (5), (6) (as amended) (provision of drainage) (see para 333 ante) apply in relation to a drain that a local authority requires to be constructed under s 59 (as amended) as they apply in relation to such a proposed drain as is mentioned in s 21 (as amended) (see para 333 ante): s 59(3).

16 For the meaning of 'statutory undertakers' see para 313 note 10 ante.

17 *Ie* under the Transport Act 2000 Pt I Ch I (ss 1-40).

18 Building Act 1984 s 59(4) (amended by the Airports Act 1986 s 83(5), Sch 6 Pt I; and the Transport Act 2000 (Consequential Amendments) Order 2001, SI 2001/4050, art 2, Sch para 7(b)(i)). For these purposes, the undertaking of a person who holds a licence under the Transport Act 2000 Pt I Ch I is taken to be the person's undertaking as licence holder: Building Act 1984 s 59(5) (added by the Transport Act 2000 (Consequential Amendments) Order 2001, SI 2001/4050, art 2, Schedule Pt II para 7(b)(ii)).

19 Building Act 1984 s 59(4)(a) (amended by the Airports Act 1986 Sch 6 Pt I). For the meaning of 'house' see para 313 note 10 ante.

20 Building Act 1984 s 59(4)(b) (amended by the Airports Act 1986 Sch 6 Pt I).

UPDATE

382-405 Specific Building Requirements

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

382 Drainage of building

TEXT AND NOTES 16-20-As from a day to be appointed, 1984 Act s 59(4), (5) repealed:
Sustainable and Secure Buildings Act 2004 s 5.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/4. SPECIFIC BUILDING REQUIREMENTS/(1) DRAINAGE/383. Use and ventilation of soil pipes.

383. Use and ventilation of soil pipes.

A pipe for conveying rain water from a roof must not be used for the purpose of conveying the soil or drainage from a sanitary convenience¹. The soil pipe from a water closet² must be properly ventilated³. A pipe for conveying surface water⁴ from premises⁵ must not be permitted to act as a ventilating shaft to a drain⁶ or sewer⁷ conveying foul water⁸. If it appears to the local authority⁹ that there is on any premises a contravention¹⁰ of this statutory requirement¹¹, it may by notice¹² require the owner¹³ or the occupier of those premises to execute such work as may be necessary to remedy the matter¹⁴.

1 Building Act 1984 s 60(1). 'Sanitary convenience' means closet or urinal: s 126. 'Closet' includes privy: s 126.

As the making of building regulations to modify or repeal the provisions of s 60 (as amended), on the ground of inconsistency with other provisions, see s 1(3), Sch 1 para 11(1); and para 307 ante. The provisions of s 60 (as amended) do not apply to the Inner Temple or the Middle Temple: see s 88(1), Sch 3 para 6; and para 303 ante.

2 'Water closet' means a closet that has a separate fixed receptacle connected to a drainage system and separate provision for flushing from a supply of clean water either by the operation of mechanism or by automatic action: *ibid* s 126.

3 *Ibid* s 60(2).

4 'Surface water' includes water from roots: *ibid* s 126.

5 As to the meaning of 'premises' see para 310 note 2 ante.

6 For the meaning of 'drain' see para 333 note 6 ante.

7 As to the meaning of 'sewer' see para 333 note 7 ante.

8 Building Act 1984 s 60(3).

9 For the meaning of 'local authority' see para 301 note 12 ante.

10 As to the meaning of 'contravention' see para 310 note 10 ante.

11 *Ie* the provisions of the Building Act 1984 s 60 (as amended).

12 The provisions of *ibid* s 99 (content and enforcement of notice requiring works) (see para 409 post), and s 102 (appeal against notice requiring works) (see para 421 post) apply in relation to a notice given under s 60(4) (as amended): s 60(5).

13 For the meaning of 'owner' see para 310 note 2 ante.

14 Building Act 1984 s 60(4) (amended by the Water Act 1989 ss 69, 190(3), Sch 8 para 7, Sch 27 Pt I).

UPDATE

382-405 Specific Building Requirements

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/4. SPECIFIC BUILDING REQUIREMENTS/(1) DRAINAGE/384. Repair etc of drain.

384. Repair etc of drain.

No person must:

- 273 (1) except in case of emergency, repair, reconstruct or alter the course of an underground drain¹ that communicates with a sewer², or with a cesspool³ or other receptacle for drainage⁴; or
- 274 (2) where in a case of emergency any such works have been executed without notice, cover over the drain or sewer⁵,

without giving to the local authority⁶ at least 24 hours' notice⁷ of his intention to do so⁸. While any such work is being executed, all persons concerned must permit the proper officer⁹, or any other authorised officer¹⁰, of the local authority to have free access to the work¹¹. A person who fails to comply with this is liable on summary conviction to a fine¹².

The provisions described above do not apply to so much of a drain or sewer constructed by, or belonging to, a railway company as runs under, across or along its railway¹³, or so much of a drain or sewer constructed by, or belonging to, dock undertakers as is situated in or on land of the undertakers that is held or used by them for the purposes of their undertaking¹⁴.

1 For the meaning of 'drain' see para 333 note 6 ante.

2 As to the meaning of 'sewer' see para 333 note 7 ante.

3 As to the meaning of 'cesspool' see para 307 note 42 ante.

4 Building Act 1984 s 61(1)(a). As to the making of building regulations to modify or repeal the provisions of s 61, on the ground of inconsistency with other provisions, see s 1(3), Sch 1 para 11(1); and para 307 ante. The provisions of s 61 do not apply to the Inner Temple or the Middle Temple: see s 88(1), Sch 3 para 6; and para 303 ante.

5 Ibid s 61(1)(b).

6 For the meaning of 'local authority' see para 301 note 12 ante.

7 As to the form and service of such a notice see paras 418, 420 post.

8 Building Act 1984 s 61(1).

9 'Proper officer', in relation to a purpose and to a local authority, means an officer appointed for that purpose by that authority: *ibid* s 126. 'Officer' includes servant: s 126.

10 'Authorised officer', in relation to a local authority, means: (1) an officer of the local authority authorised by it in writing, either generally or specially, to act in matters of a specified kind or in a specified matter; or (2) by virtue of his appointment and for the purpose of matters within his province, a proper officer of the local authority: *ibid* s 126 (definition amended by the Local Government Act 1985 s 102(2), Sch 17).

11 Building Act 1984 s 61(2).

12 Ibid s 61(3). The fine imposed is one not exceeding level 3 on the standard scale: s 61(3). As to the standard scale see para 313 note 7 ante.

13 Ibid s 61(4)(a).

14 Ibid s 61(4)(b).

UPDATE

382-405 Specific Building Requirements

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/4. SPECIFIC BUILDING REQUIREMENTS/(1) DRAINAGE/385. Disconnection of drain.

385. Disconnection of drain.

Where a person:

- 275 (1) reconstructs in the same or a new position a drain¹ that communicates with a sewer² or another drain³;
- 276 (2) executes any works to such a drain so as permanently to discontinue its use⁴; or
- 277 (3) executes any works on premises⁵ served by such a drain so as permanently to discontinue its use⁶,

he must cause any drains or parts of drains thereby becoming disused or unnecessary to be disconnected and sealed at such points as the local authority⁷ may reasonably require⁸. A person who knowingly fails so to comply⁹ is liable on summary conviction to a fine¹⁰ and also to a further fine for each day on which the default continues after he is convicted¹¹. Any question as to the reasonableness of a requirement of a local authority must be determined by a magistrates' court¹², and the court may vary the requirement as it thinks fit¹³.

No one may be so required to carry out any work in land outside the premises served by the drain if he has no right to carry out that work, but¹⁴ the person undertaking the reconstruction of the drain or the execution of the works may break open any street¹⁵ for the purpose of complying with such a requirement¹⁶. Before a person complies with such a requirement, he must give at least 48 hours' notice¹⁷ to the local authority, and a person who fails to do so is liable on summary conviction to a fine¹⁸.

The provisions described above do not apply in relation to anything done in the course of the demolition of a building, or of part of a building, being a demolition as respects which the local authority has power¹⁹ to serve a notice on the person undertaking the demolition²⁰.

1 For the meaning of 'drain' see para 333 note 6 ante.

2 As to the meaning of 'sewer' see para 333 note 7 ante.

3 Building Act 1984 s 62(1)(a). As to the making of building regulations to modify or repeal the provisions of s 62, on the ground of inconsistency with other provisions see s 1(3), Sch 1 para 11(1); and para 307 ante.

4 Ibid s 62(1)(b).

5 As to the meaning of 'premises' see para 310 note 2 ante.

6 Building Act 1984 s 62(1)(c).

7 For the meaning of 'local authority' see para 301 note 12 ante.

8 Building Act 1984 s 62(1).

9 He fails to comply with ibid s 62(1): see the text and notes 1-8 supra.

10 He not exceeding level 1 on the standard scale: see ibid s 62(5). As to the standard scale see para 313 note 7 ante.

11 Ibid s 62(5). The fine imposed must not exceed £1 for each day on which the default continues after conviction: see s 62(5). As to continuing offences see para 427 post.

12 See generally MAGISTRATES. As to the procedure on applications to a magistrates' court see *ibid* s 103(1); and para 422 post.

13 *Ibid* s 62(2).

14 *Ie* subject to *ibid* s 101 (as amended) (breaking open of streets): see para 411 post.

15 'Street' includes a highway, including a highway over a bridge, and a road, lane, footway, square, court, alley or passage, whether a thoroughfare or not: *ibid* s 126.

16 *Ibid* s 62(3).

17 As to the form and service of such a notice see paras 418, 420 post.

18 Building Act 1984 s 62(4). The fine imposed is one not exceeding level 1 on the standard scale: s 62(4).

19 *Ie* under *ibid* s 81 (as amended): see para 401 post.

20 *Ibid* s 62(6).

UPDATE

382-405 Specific Building Requirements

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/4. SPECIFIC BUILDING REQUIREMENTS/(1) DRAINAGE/386. Improper construction or repair of water closet or drain.

386. Improper construction or repair of water closet or drain.

If a water closet¹, drain² or soil pipe is so constructed or repaired as to be prejudicial to health³ or a nuisance⁴, the person who undertook or executed the construction or repair is liable on summary conviction to a fine⁵, unless he shows that the prejudice to health or nuisance could not have been avoided by the exercise of reasonable care⁶.

A person charged with such an offence ('the original defendant') is entitled, upon information duly laid by him and on giving to the prosecutor not less than three clear days' notice of his intention, to have any other person, being his agent or servant, to whose act or default he alleges that the offence was due brought before the court at the time appointed for the hearing of the charge⁷. If, after the commission of the offence has been proved, the original defendant proves that the offence was due to the act or default of that other person, that other person may be convicted of the offence⁸, and if the original defendant further proves that he used all due diligence to secure that the water closet, drain or soil pipe in question was so constructed or repaired as not to be prejudicial to health or a nuisance, he must be acquitted of the offence⁹. Where the original defendant seeks to avail¹⁰ himself of this entitlement, the prosecutor as well as the person whom the original defendant charges with the offence has the right to cross-examine the original defendant, if he gives evidence, and any witness called by him in support of his pleas, and to call rebutting evidence¹¹, and the court may make such order as it thinks fit for the payment of costs by any party to the proceedings to any other party to them¹².

1 For the meaning of 'water closet' see para 383 note 2 ante. For the purposes of the Building Act 1984 s 63 in its application to Greater London, a reference to a water closet includes a reference to a urinal: s 63(4).

2 For the meaning of 'drain' see para 333 note 6 ante.

3 For the meaning of 'prejudicial to health' see para 382 note 8 ante.

4 As to nuisance generally see NUISANCE vol 78 (2010) PARA 101 et seq.

5 Ie a fine not exceeding level 1 on the standard scale: Building Act 1984 s 63(1). As to the standard scale see para 313 note 7 ante.

6 Ibid s 63(1). As to the making of building regulations to modify or repeal the provisions of s 63, on the ground of inconsistency with other provisions, see s 1(3), Sch 1 para 11(1); and para 307 ante.

7 Ibid s 63(2).

8 Ibid s 63(2)(a).

9 Ibid s 63(2)(b).

10 Ie seeks to avail himself of ibid s 63(2): see the text to notes 7-9 supra.

11 Ibid s 63(3)(a).

12 Ibid s 63(3)(b).

UPDATE

382-405 Specific Building Requirements

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/4. SPECIFIC BUILDING REQUIREMENTS/(2) SANITARY CONVENIENCES/387. Provision of closets in buildings.

(2) SANITARY CONVENIENCES

387. Provision of closets in buildings.

If it appears to a local authority¹ that:

- 278 (1) a building is without sufficient closet² accommodation³;
- 279 (2) a part of a building, being a part that is occupied as a separate dwelling, is without sufficient closet accommodation⁴; or
- 280 (3) any closets provided for or in connection with a building are in such a state as to be prejudicial to health⁵ or a nuisance⁶ and cannot without reconstruction be put into a satisfactory condition⁷,

the authority must, by notice⁸ to the owner⁹ of the building, require him to provide the building with such closets or additional closets, or such substituted closets, being in each case either water closets¹⁰ or earth closets¹¹, as may be necessary¹². Unless a sufficient water supply and sewer¹³ are available¹⁴, the authority may not require the provision of a water closet except in substitution for an existing water closet¹⁵.

Among the grounds on which an appeal may be brought¹⁶ against such a notice is that: (a) the need for the works to be executed under the notice would not, in whole or in part, arise but for the occupation of part of the building as a separate dwelling, and the occupation of that part as a separate dwelling is a matter in respect of which the appellant has a cause of action¹⁷; and (b) the person against whom the appellant has a cause of action ought to contribute towards the expenses of executing the works¹⁸. Where the grounds on which an appeal¹⁹ is brought include the ground specified in head (a) or head (b) above, the appellant must serve a copy of his notice of appeal on the person or persons referred to in that ground of appeal²⁰, and on the hearing of the appeal the court may make such order as it thinks fit with respect to the contribution to be made by any such person towards the cost of the works²¹, or the proportion in which any expenses that may be recoverable by the local authority are to be borne by the appellant and any such other person²².

The provisions described above do not apply to a factory²³, a building that is used as a workplace²⁴, or premises²⁵ to which the Offices, Shops and Railway Premises Act 1963²⁶ applies²⁷.

1 For the meaning of 'local authority' see para 301 note 12 ante.

2 As to the meaning of 'closet' see para 383 note 1 ante.

3 Building Act 1984 s 64(1)(a). As to the making of building regulations to modify or repeal the provisions of s 64, on the ground of inconsistency with other provisions, see s 1(3), Sch 1 para 11(1); and para 307 ante.

4 Ibid s 64(1)(b).

5 For the meaning of 'prejudicial to health' see para 382 note 8 ante.

6 As to nuisance generally see NUISANCE vol 78 (2010) PARA 101 et seq.

7 Building Act 1984 s 64(1)(c).

8 The provisions of *ibid* s 99 (content and enforcement of notice requiring works) (see para 409 post), and s 102 (appeal against notice requiring works) (see para 421 post) apply in relation to a notice given under s 64(1): s 64(3). As to the form, authentication and service of such notices see paras 418-420 post.

9 For the meaning of 'owner' see para 310 note 2 ante.

10 For the meaning of 'water closet' see para 383 note 2 ante.

11 'Earth-closet' means a closet having a movable receptacle for the reception of faecal matter and its deodorisation by the use of earth, ashes or chemicals, or by other methods: Building Act 1984 s 126.

12 *Ibid* s 64(1).

13 As to the meaning of 'sewer' see para 333 note 7 ante.

14 For these purposes, a building or proposed building:

32 (1) is not deemed to have a sufficient water supply available unless: (a) it has a sufficient supply of water laid on (Building Act 1984 s 125(2)(a)(i)); or (b) such a supply can be laid on to it from a point within 100 feet of the site of the building or proposed building, and the intervening land is land through which the owner of the building or proposed building is, or will be, entitled to lay a communication pipe (s 125(2)(a)(ii)); and

33 (2) is not deemed to have a sewer available unless: (a) there is within 100 feet of the site of the building or proposed building, and at a level that makes it reasonably practicable to construct a drain to communicate with it, a public sewer or other sewer that the owner of the building or proposed building is, or will be, entitled to use (s 125(2)(b)(i)); and (b) the intervening land is land through which he is entitled to construct a drain (s 125(2)(b)(ii)).

For the meaning of 'drain' see para 333 note 6 ante. For these purposes, 'public sewer' has the same meaning as in the Water Industry Act 1991 s 219(1) (see WATER AND WATERWAYS vol 100 (2009) PARA 138): Building Act 1984 s 126 (definition substituted by the Water Act 1989 s 190(1), (3), Sch 25 para 70(4), Sch 27 Pt I; and amended by the Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1 para 39(1), (6)). The limit of 100 feet does not apply, for the purposes of the Building Act 1984 s 125(2), if the local authority undertake to bear so much of the expenses reasonably incurred in constructing, and maintaining and repairing, a drain to communicate with a sewer, or in laying, and maintaining and repairing, a pipe for the purpose of obtaining a supply of water, as the case may be, as is attributable to the fact that the distance of the sewer, or of the point from which a supply of water can be laid on, exceeds 100 feet: s 125(3).

15 *Ibid* s 64(2).

16 *Ie* under *ibid* s 102: see para 421 post.

17 *Ibid* s 64(4)(a).

18 *Ibid* s 64(4)(b).

19 *Ie* under *ibid* s 102: see para 421 post.

20 *Ibid* s 64(5)(a).

21 *Ibid* s 64(5)(b)(i).

22 *Ibid* s 64(5)(b)(ii).

23 *Ibid* s 64(6)(a). For these purposes, 'factory' has the same meaning as in the Factories Act 1961 s 175 (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 318): Building Act 1984 s 126.

24 *Ibid* s 64(6)(b). 'Workplace' does not include a factory, but otherwise it includes any place in which persons are employed otherwise than in domestic service: s 126.

25 As to the meaning of 'premises' see para 310 note 2 ante.

26 See HEALTH AND SAFETY AT WORK.

27 Building Act 1984 s 64(6)(c).

UPDATE

382-405 Specific Building Requirements

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

387-388 Provision of closets in buildings, Provision of sanitary conveniences in workplace

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/4. SPECIFIC BUILDING REQUIREMENTS/(2) SANITARY CONVENIENCES/388. Provision of sanitary conveniences in workplace.

388. Provision of sanitary conveniences in workplace.

A building that is used as a workplace¹ must be provided with:

- 281 (1) sufficient and satisfactory accommodation in the way of sanitary conveniences², regard being had to the number of persons employed in, or in attendance at, the building³; and
- 282 (2) where persons of both sexes are employed or in attendance, sufficient and satisfactory separate accommodation for persons of each sex, unless the local authority⁴ is satisfied that in the circumstances of the particular case the provision of such separate accommodation is unnecessary⁵.

If it appears to the local authority that head (1) and head (2) above are not complied with in the case of any building, it must by notice⁶ require the owner⁷ or the occupier of the building to make such alterations in the existing conveniences, and to provide such additional conveniences, as may be necessary⁸.

The provisions described above do not apply to premises⁹ to which the Offices, Shops and Railway Premises Act 1963¹⁰ applies¹¹.

1 As to the meaning of 'workplace' see para 387 note 24 ante.

2 For the meaning of 'sanitary convenience' see para 383 note 1 ante.

3 Building Act 1984 s 65(1)(a). As to the making of building regulations to modify or repeal the provisions of s 65, on the ground of inconsistency with other provisions, see s 1(3), Sch 1 para 11(1); and para 307 ante.

4 For the meaning of 'local authority' see para 301 note 12 ante.

5 Building Act 1984 s 65(1)(b).

6 The provisions of *ibid* s 99 (content and enforcement of notice requiring works) (see para 409 post), and s 102 (appeal against notice requiring works) (see para 421 post) apply in relation to a notice given under s 65(2): s 65(3). As to the form, authentication and service of such notices see paras 418-420 post.

7 For the meaning of 'owner' see para 310 note 2 ante.

8 Building Act 1984 s 65(2).

9 For the meaning of 'premises' see para 310 note 2 ante.

10 See HEALTH AND SAFETY AT WORK.

11 Building Act 1984 s 65(4).

UPDATE

382-405 Specific Building Requirements

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

387-388 Provision of closets in buildings, Provision of sanitary conveniences in workplace

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/4. SPECIFIC BUILDING REQUIREMENTS/(2) SANITARY CONVENIENCES/389. Replacement of earth closets, etc.

389. Replacement of earth closets, etc.

If a building has a sufficient water supply and sewer¹ available², the local authority³ may by notice⁴ to the owner⁵ of the building require that any closets⁶, other than water closets⁷, provided for, or in connection with, the building must be replaced by water closets, notwithstanding that the closets are not insufficient in number and are not prejudicial to health⁸ or a nuisance⁹. Such a notice must require the owner to execute the necessary works, or require that the authority itself must be allowed to execute them, and must state the effect of head (1) and head (2) below¹⁰. Where the local authority gives such a notice:

- 283 (1) if it requires the owner to execute the works, the owner is entitled to recover from it one-half of the expenses reasonably incurred by him in the execution of the works¹¹; and
- 284 (2) if it requires that it must be allowed to execute the works, it is entitled to recover from the owner one-half of the expenses reasonably incurred by it in the execution of the works¹².

Where the owner of a building proposes to provide it with a water closet in substitution for a closet of any other type, the local authority may, if it thinks fit, agree to pay him a part, not exceeding one-half, of the expenses reasonably incurred in effecting the replacement, notwithstanding that such a notice has not been given by it¹³.

1 As to the meaning of 'sewer' see para 333 note 7 ante.

2 As to the sufficiency of the water supply and the availability of a sewer for the purposes of the Building Act 1984 s 66(1) see s 125(2), (3); and para 387 note 14 ante.

3 For the meaning of 'local authority' see para 301 note 12 ante.

4 The provisions of the Building Act 1984 s 99 (content and enforcement of notice requiring works) (see para 409 post), and s 102 (appeal against notice requiring works) (see para 421 post) apply in relation to a notice given under s 66(1), subject to the modifications that no appeal lies on the ground that the works are unnecessary, and any reference in s 99 to the expenses reasonably incurred in executing works is a reference to one-half of those expenses: s 66(5). As to the form, authentication and service of such notices see paras 418-420 post.

5 For the meaning of 'owner' see para 310 note 2 ante.

6 As to the meaning of 'closet' see para 383 note 1 ante.

7 For the meaning of 'water closet' see para 383 note 2 ante.

8 For the meaning of 'prejudicial to health' see para 382 note 8 ante.

9 Building Act 1984 s 66(1). As to the making of building regulations to modify or repeal the provisions of s 66, on the ground of inconsistency with other provisions, see s 1(3), Sch 1 para 11(1); and para 307 ante. As to nuisance generally see NUISANCE vol 78 (2010) PARA 101 et seq.

10 Ibid s 66(2).

11 Ibid s 66(3)(a).

12 Ibid s 66(3)(b).

13 Ibid s 66(4).

UPDATE

382-405 Specific Building Requirements

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/4. SPECIFIC BUILDING REQUIREMENTS/(2) SANITARY CONVENIENCES/390. Loan of temporary sanitary conveniences.

390. Loan of temporary sanitary conveniences.

A local authority¹ may, at the request of the occupier of any premises² connected with a cesspool³, sewer⁴ or drain⁵ on which any work of maintenance, improvement or repair that necessitates the disconnection of the sanitary conveniences⁶ provided for or in connection with the premises is to be carried out by a local authority, or by the owner⁷ or occupier of the premises⁸, supply on loan temporary sanitary conveniences in substitution for any sanitary conveniences so disconnected⁹.

The local authority may make reasonable charges for supplying removing and cleansing any temporary sanitary conveniences so lent for more than seven days¹⁰. No charge may be made for the use of the temporary sanitary conveniences for the first seven days¹¹, or in a case where the work is made necessary by a defect in a public sewer¹². No charge may be made where the work is made necessary by a defect in a cesspool, private sewer¹³ or drain in respect of which the local authority has served a notice¹⁴, but, if the temporary sanitary conveniences are provided for a period of more than seven days, the reasonable expenses of supplying, removing and cleansing them are recoverable from the owner of the premises (but not any charge for the use of them for the first seven days)¹⁵. In proceedings to recover expenses¹⁶ where the work is made necessary by such a defect in a cesspool, private sewer or drain, the court may:

- 285 (1) inquire whether the expenses ought to be borne wholly or in part by some person other than the defendant in the proceedings¹⁷; and
- 286 (2) make such order concerning the expenses or their apportionment as appears to the court to be just¹⁸,

but the court cannot order the expenses or any part of them to be borne by any person other than the defendant in the proceedings unless the court is satisfied that that other person has had notice of the proceedings and an opportunity of being heard¹⁹.

1 For the meaning of 'local authority' see para 301 note 12 ante.

2 As to the meaning of 'premises' see para 310 note 2 ante.

3 As to the meaning of 'cesspool' see para 307 note 42 ante.

4 As to the meaning of 'sewer' see para 333 note 7 ante.

5 For the meaning of 'drain' see para 333 note 6 ante.

6 For the meaning of 'sanitary convenience' see para 383 note 1 ante.

7 For the meaning of 'owner' see para 310 note 2 ante.

8 Ie in pursuance of the Building Act 1984 s 59 (as amended): see para 382 ante.

9 Ibid s 67(1). As to the making of building regulations to modify or repeal the provisions of s 67, on the ground of inconsistency with other provisions, see s 1(3), Sch 1 para 11(1); and para 307 ante.

10 Ibid s 67(2).

11 Ibid s 67(3)(a).

12 Ibid s 67(3)(b) (amended by the Water Act 1989 s 190(3), Sch 27 Pt I). For these purposes, 'public sewer' has the same meaning as in the Water Industry Act 1991 s 219(1) (see WATER AND WATERWAYS vol 100 (2009) PARA 138); Building Act 1984 s 126 (definition substituted by the Water Act 1989 s 190(1), (3), Sch 25 para 70(4), Sch 27 Pt I; and amended by the Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1 para 39(1), (6)).

13 For the meaning of 'private sewer' see para 334 note 6 ante.

14 Ie under the Building Act 1984 s 59 (as amended) (see para 382 ante).

15 Ibid s 67(4) (amended by the Water Act 1989 Sch 27 Pt I).

16 Ie under the Building Act 1984 s 67(4) (as amended): see the text and notes 13-15 supra.

17 Ibid s 67(5)(a).

18 Ibid s 67(5)(b).

19 Ibid s 67(5).

UPDATE

382-405 Specific Building Requirements

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/4. SPECIFIC BUILDING REQUIREMENTS/(2) SANITARY CONVENIENCES/391. Erection of public conveniences.

391. Erection of public conveniences.

No person may erect¹ a public sanitary convenience² in, or so as to be accessible from, a street³ without the consent⁴ of the local authority⁵, which may give its consent upon such terms as to the use of the convenience or its removal at any time, if required by it, as it thinks fit⁶. A person aggrieved⁷ by the refusal of a local authority to give such a consent, or by any terms imposed by it, may appeal to a magistrates' court⁸. The local authority may by notice⁹ require the owner¹⁰ of a sanitary convenience:

287 (1) that has been erected without such consent being given¹¹, or that the authority is, by virtue of the terms of a consent so given, entitled to require to be removed, to remove it¹²; or

288 (2) that opens on a street, and is so placed or constructed as to be a nuisance¹³ or offensive to public decency, to remove it or permanently close it¹⁴.

1 For the purposes of the Building Act 1984 Pt III (ss 59-90) (as amended) (see para 382 et seq ante), each of the following operations is deemed to be the erection of a building:

34 (1) the re-erection of a building or part of a building when an outer wall of that building or, as the case may be, that part of a building has been pulled down, or burnt down, to within 10 feet of the surface of the ground adjoining the lowest storey of the building or of that part of the building (s 123(2)(a));

35 (2) the re-erection of a frame building or part of a frame building when that building or part of a building has been so far pulled down, or burnt down, as to leave only the framework of the lowest storey of the building or of that part of the building (s 123(2)(b));

36 (3) the roofing over of an open space between walls or buildings (s 123(2)(c)),

and 'erect' must be construed accordingly: s 123(2).

2 For the meaning of 'sanitary convenience' see para 383 note 1 ante.

3 As to the meaning of 'street' see para 385 note 15 ante.

4 As to the form, authentication and service of a consent by a local authority see paras 418-420 post.

5 For the meaning of 'local authority' see para 301 note 12 ante. For these purposes, a reference to a local authority, in relation to a street that is a highway for which the local authority is not the highway authority, is a reference to the highway authority: Building Act 1984 s 68(6). 'Highway authority' means, in the case of a highway repairable by the inhabitants at large, the council in whom the highway is vested: s 126. As to highway authorities see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) para 49 et seq.

6 Ibid s 68(1). A person who contravenes s 68(1) is liable on summary conviction to a fine not exceeding level 1 on the standard scale (as to which see para 313 note 7 ante), without prejudice to the right of the authority under s 68(4) (see the text and notes 9-14 infra) to require the convenience to be removed: s 68(2). Section 68(1) does not apply to a sanitary convenience erected by a railway company within its railway station or its yard or approaches, or erected by dock undertakers in or on land that belongs to them and is held or used by them for the purposes of their undertaking: s 68(7). For the meaning of 'contravene' see para 310 note 10 ante.

The provisions of s 68 do not affect the powers of: (1) a county council under the Public Health Act 1936 s 87 (as amended) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 996); (2) the Secretary of State under the Highways Act 1980 s 112 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) para 709); or (3) a county council under s 114(1) (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) para 569): Building Act 1984 s 68(8) (amended by the Local Government Act 1985 s 102(2), Sch 17).

As to the making of building regulations to modify or repeal the provisions of the Building Act 1984 s 68, on the ground of inconsistency with other provisions, see s 1(3), Sch 1 para 11(1); and para 307 ante.

7 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARA 656.

8 Building Act 1984 s 68(3). As to magistrates' courts see MAGISTRATES. As to appeals generally see paras 422-423 post.

9 The provisions of ibid s 99 (content and enforcement of notice requiring works) (see para 409 post), and s 102 (appeal against notice requiring works) (see para 421 post) apply in relation to a notice given under s 68(4): s 68(5). As to the form, authentication and service of such notices see paras 418-420 post.

10 For the meaning of 'owner' see para 310 note 2 ante.

11 In contravention of the Building Act 1984 s 68(1): see the text to notes 1-6 supra.

12 Ibid s 68(4)(a).

13 As to nuisance generally see NUISANCE vol 78 (2010) PARA 101 et seq.

14 Building Act 1984 s 68(4)(b).

UPDATE

382-405 Specific Building Requirements

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

391 Erection of public conveniences

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/4. SPECIFIC BUILDING REQUIREMENTS/(3) BUILDINGS/392. Provision of food storage accommodation in house.

(3) BUILDINGS

392. Provision of food storage accommodation in house.

If it appears to a local authority¹ that a house², or part of a building that is occupied as a separate dwelling, is without sufficient and suitable accommodation for the storage of food, the local authority may by notice³ require the owner⁴ of the house or building to provide the house or building with sufficient and suitable accommodation for that purpose⁵. Among the grounds on which an appeal may be brought⁶ against such a notice are:

- 289 (1) that it is not reasonably practicable to comply with the notice⁷;
- 290 (2) that: (a) the need for the works to be executed under the notice would not, in whole or in part, arise but for the occupation of part of the building as a separate dwelling, and that the occupation of that part as a separate dwelling is a matter in respect of which the appellant has a cause of action⁸; and (b) the person against whom the appellant has a cause of action ought to contribute towards the expenses of executing the works⁹.

Where the grounds on which such an appeal is brought include the ground specified in head (2) (b) above:

- 291 (i) the appellant must serve a copy of his notice of appeal on the person or persons referred to in that ground of appeal¹⁰; and
- 292 (ii) on the hearing of the appeal the court may make such order as it thinks fit with respect to the contribution to be made by any such person towards the cost of the works¹¹, or the proportion in which any expenses that may be recoverable by the local authority are to be borne by the appellant and any such other person¹².

1 For the meaning of 'local authority' see para 301 note 12 ante.

2 For the meaning of 'house' see para 313 note 10 ante.

3 The provisions of the Building Act 1984 s 99 (content and enforcement of notice requiring works) (see para 409 post), and s 102 (appeal against notice requiring works) (see para 421 post) apply in relation to a notice given under s 70(1): s 70(2). As to the form, authentication and service of such notices see paras 418-420 post.

4 For the meaning of 'owner' see para 310 note 2 ante.

5 Building Act 1984 s 70(1). As to the making of building regulations to modify or repeal the provisions of s 70, on the ground of inconsistency with other provisions, see s 1(3), Sch 1 para 11(1); and para 307 ante.

6 *Ie* under *ibid* s 102: see para 421 post.

7 *Ibid* s 70(3)(a).

8 *Ibid* s 70(3)(b)(i).

9 *Ibid* s 70(3)(b)(ii).

10 *Ibid* s 70(4)(a).

11 *Ibid* s 70(4)(b)(i).

12 Ibid s 70(4)(b)(ii).

UPDATE

382-405 Specific Building Requirements

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/4. SPECIFIC BUILDING REQUIREMENTS/(3) BUILDINGS/393. Entrances, exits etc to be required in certain cases.

393. Entrances, exits etc to be required in certain cases.

If it appears to a local authority¹ that a building to which the provision relating to the provision of exits² applies is not provided with such means of ingress and egress and passages or gangways as the authority, after consultation with the fire authority³, deems satisfactory, regard being had to the purposes for which the building is used, and the number of persons likely to resort to it at any one time, the authority must by notice⁴ require the owner⁵ of the building to execute such work and make such provision as may be necessary⁶.

If the authority is satisfied that the safety of the public requires that immediate action should be taken in the case of any building as respects which it has given such a notice, it may apply to a magistrates' court⁷, and the court may make such temporary order as it thinks fit for the closing of the building to, or for restricting its use by, the public⁸. The person having the control of any such building must take steps to secure that the means of ingress and egress and the passages and gangways, while persons are assembled in the building, are kept free and unobstructed, except in so far as the local authority may, after consultation with the fire authority, otherwise approve, and if he fails to do so he is liable on summary conviction to a fine⁹.

1 For the meaning of 'local authority' see para 301 note 12 ante.

2 I.e. the Building Act 1984 s 24: see para 336 ante. The provisions of s 71 (see the text and notes *infra*) apply to the buildings to which s 24 (see para 336 ante) applies: s 71(5). Section 71 is expressed to be subject to the Fire Precautions Act 1971 s 30(3) (see FIRE SERVICES vol 18(2) (Reissue) para 147); Building Act 1984 s 71(6). As to the making of building regulations to modify or repeal the provisions of s 71, on the ground of inconsistency with other provisions, see s 1(3), Sch 1 para 11(1); and para 307 ante. Section 71 does not apply to inner London: see s 88(1), Sch 3 para 5; and para 303 ante. For the meaning of 'inner London' see para 303 note 10 ante.

3 For these purposes, 'fire authority' has the same meaning as in the Fire Precautions Act 1971 s 43(1) (see FIRE SERVICES vol 18(2) (Reissue) para 17); Building Act 1984 s 126. A passageway is not a gangway: *Jennings v Norman Collison (Contractors) Ltd* [1970] 1 All ER 1121, CA.

4 The provisions of the Building Act 1984 s 99 (content and enforcement of notice requiring works) (see para 409 post), and s 102 (appeal against notice requiring works) (see para 421 post) apply in relation to a notice given under s 71(1): s 71(2). As to the form, authentication and service of such notices see paras 418-420 post.

5 For the meaning of 'owner' see para 310 note 2 ante.

6 Building Act 1984 s 71(1).

7 See generally MAGISTRATES. As to the procedure on applications to a magistrates' court see *ibid* s 103(1); and para 422 post.

8 *Ibid* s 71(3).

9 *Ibid* s 71(4). The fine imposed is one not exceeding level 4 on the standard scale: s 71(4). As to the standard scale see para 313 note 7 ante.

UPDATE

382-405 Specific Building Requirements

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

393-396 Entrances, exits etc to be required in certain cases ... Cellars and rooms below subsoil water level

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

393 Entrances, exits etc to be required in certain cases

TEXT AND NOTES--1984 Act s 71 repealed: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

NOTES 2, 3--1971 Act replaced: SI 2005/1541 (see TEXT AND NOTES).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/4. SPECIFIC BUILDING REQUIREMENTS/(3) BUILDINGS/394. Fire escapes and smoke detectors.

394. Fire escapes and smoke detectors.

If it appears to a local authority¹, after consultation with the fire authority², that³ a building meeting the statutory description⁴ is not provided with⁵, or a proposed building of that description will not be provided with⁶ such means of escape in case of fire as the local authority, after such consultation, deems necessary from each storey whose floor is more than 20 feet above the surface of the street or ground on any side of the building, the authority must by notice⁷ require the owner⁸ of the building, or, as the case may be, the person proposing to erect⁹ the building, to execute such work or make such other provision as may be necessary¹⁰. In so far as such a notice requires a person to make provision otherwise than by the execution of works, he is, if he fails to comply with the notice, liable on summary conviction to a fine¹¹ and to a further fine for each day on which the offence continues after he is convicted¹². In such proceedings, it is open to the defendant to question the reasonableness of the authority's requirements¹³.

Where building regulations¹⁴ imposing requirements as to the provision of means of escape in case of fire are applicable to a proposed building or proposed extension of a building, or would be so applicable but for a direction¹⁵ dispensing with such requirements the provisions described above¹⁶, and any provision of a local Act¹⁷ that has effect in place of those provisions, does not apply in relation to the proposed building or extension¹⁸.

As from a day to be appointed¹⁹, provision is made requiring new dwellings constructed in the course of a business to be fitted with smoke detectors²⁰.

1 For the meaning of 'local authority' see para 301 note 12 ante.

2 For these purposes, 'fire authority' has the same meaning as in the Fire Precautions Act 1971 s 43(1) (see FIRE SERVICES vol 18(2) (Reissue) para 17): Building Act 1984 s 126.

3 Ibid s 72(1). The provisions of s 72(1)-(4), (6), (7) do not apply to inner London: see s 88(1), Sch 3 para 5; and para 303 ante. As to the making of building regulations to modify or repeal the provisions of s 72, on the ground of inconsistency with other provisions, see s 1(3), Sch 1 para 11(1); and para 307 ante. Section 72 is expressed to be subject to the Fire Precautions Act 1971 s 30(3) (see FIRE SERVICES vol 18(2) (Reissue) para 147): Building Act 1984 s 72(7). For the meaning of 'inner London' see para 303 note 10 ante.

4 I.e. a building that exceeds two storeys in height and in which the floor of any upper storey is more than 20 feet above the surface of the street or ground on any side of the building and that: (1) is let in flats or tenement dwellings; (2) is used as an inn, hotel, boarding-house, hospital, nursing home, boarding-school, children's home or similar institution; or (3) is used as a restaurant, shop, store or warehouse and has on an upper floor sleeping accommodation for persons employed on the premises: ibid s 72(6). As to the meaning of 'street' see para 385 note 15 ante.

5 Ibid s 72(1)(a). See note 3 supra.

6 Ibid s 72(1)(b). See note 3 supra.

7 The provisions of ibid s 99 (content and enforcement of notice requiring works) (see para 409 post), and s 102 (appeal against notice requiring works) (see para 421 post) apply in relation to a notice given under s 72(1) in so far as it requires a person to execute works: s 72(2). As to the form, authentication and service of such notices see paras 418-420 post. See note 3 supra.

8 For the meaning of 'owner' see para 310 note 2 ante.

9 For the meaning of 'erect' see para 391 note 1 ante.

10 Building Act 1984 s 72(1). See note 3 supra.

- 11 le not exceeding level 4 on the standard scale: *ibid* s 72(3). As to the standard scale see para 313 note 7 ante.
- 12 *Ibid* s 72(3). The fine imposed must not exceed £2 for each day on which the offence continues after conviction: see s 72(3). As to continuing offences see para 427 post. See note 3 *supra*.
- 13 *Ibid* s 72(4). See note 3 *supra*.
- 14 For the meaning of 'building regulations' see para 306 ante.
- 15 le under the Building Act 1984 s 8: see para 315 ante.
- 16 le *ibid* s 72.
- 17 As to the meaning of 'local Act' see para 305 note 2 ante.
- 18 Building Act 1984 s 72(5).
- 19 The Smoke Detectors Act 1991 is to be brought into force by order made by the Secretary of State under s 7(3) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.
- 20 See *ibid* s 1 (not yet in force). It is the duty of the local authority to enforce the requirement (see s 4 (not yet in force)), but it may give directions dispensing with or relaxing the requirement (see s 2 (not yet in force)). Specific provision is made by s 5 (not yet in force; but amended by the Deregulation (Building) (Initial Notices and Final Certificates) Order 1996, SI 1996/1905, art 3(11)) in relation to where an initial notice under the Building Act 1984 Pt II (ss 47-58) (as amended) (see para 356 et seq ante) is in force in respect of any work which consists of the construction of a dwelling in the course of a business. The Secretary of State may approve and issue documents providing practical guidance with respect to the fitting of smoke detectors: see the Smoke Detectors Act 1991 s 3 (not yet in force). He also has power to repeal or modify provisions of the Act: see s 6 (not yet in force). Building regulations may also make provision with respect to fire precautions: see para 307 ante. As to the commencement of the Smoke Detectors Act 1991 see note 19 *supra*.

UPDATE

382-405 Specific Building Requirements

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

393-396 Entrances, exits etc to be required in certain cases ... Cellars and rooms below subsoil water level

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

394 Fire escapes and smoke detectors

NOTES 2, 3--1971 Act replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

TEXT AND NOTE 2--Reference to a fire authority is now to a fire and rescue authority: 1984 Act s 72(1) (amended by the Fire and Rescue Services Act 2004 Sch 1 para 57(2), (3)(f)).

NOTE 2--Now 'fire and rescue authority': 1984 Act s 126 (definition amended by the 2004 Act Sch 1 para 57(2), (3)(i)).

NOTE 3--1984 Act s 72(7) repealed: SI 2005/1541 (see NOTES 2, 3).

NOTE 4--Heads (2), (3) omitted: 1984 Act s 72(6) (amended by SI 2005/1541; see NOTES 2, 3).

TEXT AND NOTES 19, 20--1991 Act repealed: SI 2005/1541 (see NOTES 2, 3).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/4. SPECIFIC BUILDING REQUIREMENTS/(3) BUILDINGS/395. Raising of chimney.

395. Raising of chimney.

Where, after 3 October 1961¹:

- 293 (1) a person erects² or raises a building ('the taller building') to a greater height than an adjoining building³; and
- 294 (2) any chimneys or flues of an adjoining building are in a party wall between the two buildings or are six feet or less from the nearest part of the taller building⁴,

the local authority⁵ may by notice⁶:

- 295 (a) require that person, within such time as may be specified in the notice, to build up those chimneys and flues, if it is reasonably practicable so to do, so that their top will be of the same height as the top of the chimneys of the taller building or the top of the taller building, whichever is the higher⁷; and
- 296 (b) require the owner⁸ or occupier of the adjoining building to allow the first mentioned person to enter on that building and carry out such work as may be necessary to comply with the notice served on him⁹,

except that, if the owner or occupier, within 14 days from the date of service of the notice on him, serves on the first mentioned person and on the local authority a notice (a 'counter-notice') that he elects to carry out the work himself, the owner or occupier must comply with the notice served under head (a) above instead of the first mentioned person and may recover the expenses reasonably incurred in so doing from that person¹⁰. A person on whom a notice is served under head (a) or head (b) above may appeal to a magistrates' court¹¹.

If:

- 297 (i) a person on whom a notice is served under head (a) above fails to comply with the notice, except in a case where the owner or occupier of an adjoining building has refused to allow entry on that building, or has refused to allow the carrying out of any such work as may be necessary to comply with the notice, or has served a counter-notice¹²; or
- 298 (ii) a person on whom a notice is served under head (b) above fails to comply with the notice or, having served a counter-notice, fails to comply with the notice served under head (a) above¹³,

he is liable on summary conviction to a fine¹⁴, and the local authority may itself carry out such work as may be necessary to comply with the notice served¹⁵, and recover the expenses reasonably incurred in doing so from the person on whom that notice was served¹⁶.

1 le the date of commencement of the relevant provisions of the Public Health Act 1961. The relevant provisions of the Public Health Act 1961 have been repealed by the Building Act 1984 s 133(2), Sch 7.

2 For the meaning of 'erect' see para 391 note 1 ante.

3 Building Act 1984 s 73(1)(a). The provisions of s 73 do not apply to inner London: see s 88(1), Sch 3 para 5; and para 303 ante. As to the making of building regulations to modify or repeal the provisions of s 73, on the

ground of inconsistency with other provisions, see s 1(3), Sch 1 para 11(1); and para 307 ante. For the meaning of 'inner London' see para 303 note 10 ante.

4 Ibid s 73(1)(b).

5 For the meaning of 'local authority' see para 301 note 12 ante.

6 As to the form, authentication and service of such notices see paras 418-420 post.

7 Building Act 1984 s 73(1)(i).

8 For the meaning of 'owner' see para 310 note 2 ante.

9 Building Act 1984 s 73(1)(ii).

10 Ibid s 73(1).

11 Ibid s 73(2). As to magistrates' courts see generally MAGISTRATES. As to appeals generally see paras 422-423 post.

12 Ibid s 73(3)(a).

13 Ibid s 73(3)(b).

14 ie not exceeding level 1 on the standard scale: ibid s 73(3). As to the standard scale see para 313 note 7 ante.

15 ie under ibid s 73(1): see the text and notes 1-10 supra.

16 Ibid s 73(3).

UPDATE

382-405 Specific Building Requirements

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

393-396 Entrances, exits etc to be required in certain cases ... Cellars and rooms below subsoil water level

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/4. SPECIFIC BUILDING REQUIREMENTS/(3) BUILDINGS/396. Cellars and rooms below subsoil water level.

396. Cellars and rooms below subsoil water level.

No person may without the consent¹ of the local authority construct a cellar or room in, or as part of, a house, shop, inn, hotel or office if the floor level of the cellar or room is lower than the ordinary level of the subsoil water on, under or adjacent to the site of the house, shop, inn, hotel or office². This does not apply to:

- 299 (1) the construction of a cellar or room carried out in accordance with plans deposited on an application under the Licensing Act 1964³ to licensing justices on which they made a provisional grant of a justices' licence for the premises of which the cellar or room forms part⁴, or a removal of a justices' licence to those premises⁵; or
- 300 (2) the construction of a cellar or room in connection with a shop, inn, hotel or office that forms part of a railway station⁶.

If a person who constructs a cellar or room acts in contravention of the requirement to obtain consent⁷, or of any condition attached to such a consent he is liable on summary conviction to a fine⁸, and the local authority may by notice⁹ require him either to alter the cellar or room so that its construction will no longer contravene that requirement or condition or, if he so elects, to fill it in or otherwise make it unusable¹⁰.

If the owner for the time being of the house, shop, inn, hotel or office causes or permits a cellar or room forming part of it to be used in a manner that he knows to be in contravention of a condition attached to such a consent, he is liable on summary conviction to a fine¹¹.

1 As to the form, authentication and service of such consents see paras 418-420 post. A consent under the Building Act 1984 s 74 may be given subject to such conditions as to the construction or use of the premises as may be specified in it, and conditions specified in such a consent are binding on successive owners of the house, shop, inn, hotel or office: s 75(1). For the meaning of 'house' see para 313 note 10 ante. As to the meaning of 'premises' see para 310 note 2 ante. For the meaning of 'owner' see para 310 note 2 ante. If a local authority: (1) refuses an application for such a consent; or (2) attaches any conditions to such a consent, the person applying for the consent may appeal to a magistrates' court against the refusal or, as the case may be, against any of the conditions, and if a magistrates' court allows an appeal against a refusal to grant a consent it may direct the local authority to give their consent subject to such conditions, if any, as appears to the court to be appropriate: s 75(2). For the meaning of 'local authority' see para 301 note 12 ante. An application may be made at any time to the local authority for the variation or withdrawal of a condition attached to such a consent, and, if the local authority refuses the application, the applicant may appeal to a magistrates' court: s 75(3). As to appeals generally see paras 422-423 post. Sections 74 and 75 do not apply to inner London: see s 88(1), Sch 3 para 5; and para 303 ante. For the meaning of 'inner London' see para 303 note 10 ante. As to the making of building regulations to modify or repeal the provisions of ss 74, 75, on the ground of inconsistency with other provisions, see s 1(3), Sch 1 para 11(1); and para 307 ante.

2 Ibid s 74(1).

3 See LICENSING AND GAMBLING vol 67 (2008) PARA 26 et seq.

4 Building Act 1984 s 74(2)(a)(i).

5 Ibid s 74(2)(a)(ii).

6 Ibid s 74(2)(b).

7 Ie in contravention of ibid s 74(1) (see the text to notes 1-2 supra). As to the meaning of 'contravention' see para 310 note 10 ante.

8 Ibid s 74(3)(a). The fine imposed is one not exceeding level 1 on the standard scale: s 74(3)(a). As to the standard scale see para 313 note 7 ante.

9 The provisions of ibid s 99 (content and enforcement of notice requiring works) (see para 409 post), and s 102 (appeal against notice requiring works) (see para 421 post) apply in relation to a notice given under s 74(3), subject to the following modifications:

37 (1) s 99(1) requires the notice to indicate the nature of the works of alteration and that of the works for making the cellar or room unusable (s 74(4)(a)); and

38 (2) s 99(2) authorises the local authority to execute, subject to s 99(2), at its election either the works of alteration or the works for making the cellar or room unusable (s 74(4)(b)).

As to the meaning of 'modifications' see para 307 note 24 ante. As to the form, authentication and service of such notices see paras 418-420 post.

10 Ibid s 74(3)(b).

11 Ibid s 74(5). The fine imposed is one not exceeding level 1 on the standard scale: s 74(5).

UPDATE

382-405 Specific Building Requirements

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

393-396 Entrances, exits etc to be required in certain cases ... Cellars and rooms below subsoil water level

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

396 Cellars and rooms below subsoil water level

TEXT AND NOTES 3-5--Head (1) omitted: Building Act 1984 s 74(2)(a) repealed by Licensing Act 2003 Sch 6 para 92, Sch 7.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/4. SPECIFIC BUILDING REQUIREMENTS/(4) DEFECTIVE AND DANGEROUS PREMISES/397. Defective premises.

(4) DEFECTIVE AND DANGEROUS PREMISES

397. Defective premises.

If it appears to a local authority¹ that:

- 301 (1) any premises² are in such a state (a 'defective state') as to be prejudicial to health³ or a nuisance⁴; and
- 302 (2) unreasonable delay in remedying the defective state would be occasioned by following the procedure prescribed⁵ for abatement notices⁶,

the local authority may serve on the person on whom it would have been appropriate to serve such an abatement notice a notice⁷ stating that the local authority intends to remedy the defective state and specifying the defects that it intends to remedy⁸.

The local authority may, after the expiration of nine days after service of such a notice, execute such works as may be necessary to remedy the defective state, and recover the expenses reasonably incurred in so doing from the person on whom the notice was served⁹. If, within seven days after service of such a notice, the person on whom the notice was served serves a counter-notice¹⁰ that he intends to remedy the defects specified in the first mentioned notice, the local authority must take no action in pursuance of the first mentioned notice unless the person who served the counter-notice fails within what seems to the local authority a reasonable time to begin to execute works to remedy the said defects¹¹, or having begun to execute such works fails to make such progress towards their completion as seems to the local authority reasonable¹².

In proceedings to recover such expenses¹³, the court:

- 303 (a) must inquire whether the local authority was justified in concluding that the premises were in a defective state, or that unreasonable delay in remedying the defective state would have been occasioned by following the prescribed procedure¹⁴; and
- 304 (b) if the defendant proves that he served such a counter-notice, must inquire whether the defendant failed to begin the works to remedy the defects within a reasonable time, or failed to make reasonable progress towards their completion¹⁵,

and if the court determines that the local authority was not justified in either of the conclusions mentioned in head (a) above¹⁶, or there was no failure under head (b) above¹⁷,

the local authority cannot recover the expenses or any part of them¹⁸. In such proceedings to recover expenses, the court may inquire whether the said expenses ought to be borne wholly or in part by some person other than the defendant in the proceedings¹⁹, and make such order concerning the expenses or their apportionment as appears to the court to be just²⁰, but the court cannot order the expenses or any part of them to be borne by a person other than the defendant in the proceedings unless the court is satisfied that that other person has had due notice of the proceedings and an opportunity of being heard²¹.

1 For the meaning of 'local authority' see para 301 note 12 ante.

2 As to the meaning of 'premises' see para 310 note 2 ante.

3 For the meaning of 'prejudicial to health' see para 382 note 8 ante.

4 Building Act 1984 s 76(1)(a). As to nuisance generally see NUISANCE vol 78 (2010) PARA 101 et seq. As to the making of building regulations to modify or repeal the provisions of s 76, on the ground of inconsistency with other provisions, see s 1(3), Sch 1 para 11(1); and para 307 ante.

5 Ie prescribed by the Environmental Protection Act 1990 s 80 (as amended): see NUISANCE vol 78 (2010) PARA 200 et seq.

6 Building Act 1984 s 76(1)(b) (amended by the Environmental Protection Act 1990 s 162(1), Sch 15 para 24).

7 As to the form of the notice see para 418 post; and as to its authentication see para 419 post.

8 Building Act 1984 s 76(1). A local authority must not serve a notice under s 76(1) (as amended), or proceed with the execution of works in accordance with a notice so served, if the execution of the works would, to its knowledge, be in contravention of a building preservation order under the Town and Country Planning Act 1947 s 29 (repealed): Building Act 1984 s 76(6). The Town and Country Planning Act 1947 s 29 was repealed and was not re-enacted in the Town and Country Planning Act 1971 (repealed). Buildings which were subject to building preservation orders on 1 January 1969 are now deemed to be listed buildings: see the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1(6), Sch 1 para 1; and TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) para 1096. The power conferred on a local authority by the Building Act 1984 s 76(1) may be exercised notwithstanding that the local authority might instead have proceeded under the Housing Act 1985 Pt VI (ss 189-208) (as amended) (repair notices): Building Act 1984 s 76(7) (amended by the Housing (Consequential Provisions) Act 1985 s 4, Sch 2 para 58(2)).

9 Building Act 1984 s 76(2).

10 As to the form of counter-notice see para 418 post; and as to the service of a counter-notice see para 420 post.

11 Building Act 1984 s 76(3)(a).

12 Ibid s 76(3)(b).

13 Ie under ibid s 76(2): see the text to note 9 supra.

14 Ibid s 76(4)(a) (amended by the Environmental Protection Act 1990 Sch 15 para 24). The text refers to the procedure prescribed by the Environmental Protection Act 1990 s 80 (as amended): see NUISANCE vol 78 (2010) PARA 200 et seq.

15 Building Act 1984 s 76(4)(b).

16 Ibid s 76(4)(i).

17 Ibid s 76(4)(ii).

18 Ibid s 76(4).

19 Ibid s 76(5)(a).

20 Ibid s 76(5)(b).

21 Ibid s 76(5).

UPDATE

382-405 Specific Building Requirements

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/4. SPECIFIC BUILDING REQUIREMENTS/(4) DEFECTIVE AND DANGEROUS PREMISES/398. Dangerous buildings.

398. Dangerous buildings.

If it appears to a local authority¹ that a building or structure, or part of a building or structure, is in such a condition, or is used to carry such loads, as to be dangerous, the authority may apply to a magistrates' court², and the court may:

- 305 (1) where danger arises from the condition of the building or structure, make an order requiring the owner³ of it to execute such work as may be necessary to obviate the danger⁴, or, if he so elects, to demolish the building or structure, or any dangerous part of it, and remove any rubbish⁵ resulting from the demolition⁶; or
- 306 (2) where danger arises from overloading of the building or structure, make an order restricting its use until a magistrates' court, being satisfied that any necessary works have been executed, withdraws or modifies the restriction⁷.

If the person on whom an order is made under head (1) above fails to comply with the order within the time specified, the local authority may execute the order in such manner as it thinks fit, and recover the expenses⁸ reasonably incurred by it in doing so from the person in default, and, without prejudice to the right of the authority to exercise those powers, the person is liable on summary conviction to a fine⁹.

If it appears to a local authority that a building or structure, or part of a building or structure, is in such a state, or is used to carry such loads, as to be dangerous, and immediate action should be taken to remove the danger, it may take such steps as may be necessary for that purpose¹⁰. Before exercising its powers, the local authority must, if it is reasonably practicable to do so, give notice¹¹ of its intention to the owner and occupier of the building, or of the premises¹² on which the structure is situated¹³. The local authority may recover from the owner the expenses reasonably incurred¹⁴ by it in taking such emergency measures¹⁵. In proceedings to recover such expenses, the court must inquire whether the local authority might reasonably have proceeded¹⁶ instead by applying to a magistrates' court for an order such as is mentioned in head (1) or head (2) above, and, if the court determines that the local authority might reasonably have so proceeded instead, the local authority may not recover the expenses or any part of them¹⁷. In proceedings to recover such expenses, the court may inquire whether the expenses ought to be borne wholly or in part by some person other than the defendant in the proceedings, and make such order concerning the expenses or their apportionment as appears to the court to be just, but the court must not order the expenses or any part of them to be borne by any person other than the defendant in the proceedings unless it is satisfied that that other person has had due notice of the proceedings and an opportunity of being heard¹⁸.

Where in consequence of the exercise of the power to take emergency measures in relation to dangerous buildings¹⁹ the owner or occupier of any premises sustains damage, but the provisions with respect to compensation for damage²⁰ do not apply because the owner or occupier has been in default: (a) the owner or occupier may apply to a magistrates' court to determine whether the local authority was justified in so exercising its powers so as to occasion the damage sustained²¹; and (b) if the court determines that the local authority was not so justified, the owner or occupier is entitled to compensation, and the provisions with respect to compensation for damage²² apply in relation to any dispute as regards compensation so arising²³.

1 For the meaning of 'local authority' see para 301 note 12 ante.

2 See generally MAGISTRATES. As to the procedure on applications to a magistrates' court see the Building Act 1984 s 103(1); and para 422 post.

3 For the meaning of 'owner' see para 310 note 2 ante.

4 Building Act 1984 s 77(1)(a)(i). The provisions of s 77 (as amended) and s 78 do not apply to inner London: see s 88(1), Sch 3 para 5; and para 303 ante. For the meaning of 'inner London' see para 303 note 10 ante. Section 77 (as amended) has effect subject to the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 relating to listed buildings, buildings subject to building preservation notices and buildings in conservation areas: Building Act 1984 s 77(3) (added by the Housing and Planning Act 1986 s 40(f), Sch 9 Pt I para 6(2); and amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 67(3)). See further TOWN AND COUNTRY PLANNING.

As to the making of building regulations to modify or repeal the provisions of the Building Act 1984 s 77 (as amended) and s 78, on the ground of inconsistency with other provisions, see s 1(3), Sch 1 para 11(1); and para 307 ante.

5 'Rubbish' does not include machinery, at least if its condition is not altered by the demolition: *McVittie v Bolton Corpn* [1945] KB 281, [1945] 1 All ER 379, CA.

6 Building Act 1984 s 77(1)(a)(ii).

7 Ibid s 77(1)(b).

8 These expenses are chargeable against income as between a tenant for life of leaseholds and a remainderman (*Re Copland's Settlement, Johns v Carden* [1900] 1 Ch 326: see SETTLEMENTS vol 42 (Reissue) para 961), and are outgoing for the purpose of a contract of sale (*Tubbs v Wynne* [1897] 1 QB 74: see SALE OF LAND vol 42 (Reissue) para 125). With regard to the liability as between vendor and purchaser of leaseholds see *Re Highett and Bird's Contract* [1903] 1 Ch 287, CA; and as regards the liability of a tenant under a covenant to repair see *Lister v Lane and Nesham* [1893] 2 QB 212, CA; and LANDLORD AND TENANT vol 27(1) (2006 Reissue) para 436 et seq.

9 Building Act 1984 s 77(2). The fine imposed is one not exceeding level 1 on the standard scale: s 77(2). As to the standard scale see para 313 note 7 ante.

10 Ibid s 78(1). The proper officer of a local authority may, as an officer of the local authority, exercise the powers conferred on the local authority by s 78(1): s 78(8). For the meaning of 'proper officer' see para 384 note 9 ante. Section 78 does not apply to premises forming part of a mine or quarry within the meaning of the Mines and Quarries Act 1954 (see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) para 5): Building Act 1984 s 78(9). The provisions of the Mines and Quarries Act 1954 relating to quarries have been replaced by the Quarries Regulations 1999, SI 1999/2024: see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) para 6.

11 As to the form, authentication and service of notices see paras 418-420 post.

12 As to the meaning of 'premises' see para 310 note 2 ante.

13 Building Act 1984 s 78(2).

14 Ie incurred under ibid s 78.

15 Ibid s 78(3). However, so far as expenses incurred by the local authority under s 78 consist of expenses of fencing off the building or structure, or arranging for it to be watched, the expenses are not recoverable in respect of any period after the danger has been removed by other steps under s 78 (s 78(4)(a)), or after an order made under s 77(1) (see the text to notes 1-7 supra) for the purpose of its removal has been complied with or has been executed as mentioned in s 77(2) (see the text to notes 8-9 supra) (s 78(4)(b)).

16 Ie proceeded under ibid s 77(1): see the text to notes 1-7 supra.

17 Ibid s 78(5).

18 Ibid s 78(6).

19 Ie the exercise of the powers conferred by ibid s 78.

20 Ie ibid s 106(1): see para 412 post.

21 Ibid s 78(7)(a).

22 le ibid s 106(2), (3): see para 412 post.

23 Ibid s 78(7)(b).

UPDATE

382-405 Specific Building Requirements

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/4. SPECIFIC BUILDING REQUIREMENTS/(4) DEFECTIVE AND DANGEROUS PREMISES/399. Building detrimental to amenities.

399. Building detrimental to amenities.

If it appears to a local authority¹ that a building or structure is by reason of its ruinous or dilapidated condition seriously detrimental to the amenities of the neighbourhood, the local authority may by notice² require the owner³ of it to execute such works of repair or restoration, or if he so elects, to take such steps for demolishing the building or structure, or any part of it, and removing any rubbish or other material resulting from or exposed by the demolition, as may be necessary in the interests of amenity⁴. If it appears to a local authority that rubbish or other material resulting from, or exposed by, the demolition or collapse of a building or structure is lying on the site or on any adjoining land⁵, and by reason of it the site or land is in such a condition as to be seriously detrimental to the amenities of the neighbourhood⁶, the local authority may by notice⁷ require the owner of the site or land to take steps for removing the rubbish or material as may be necessary in the interests of amenity⁸.

1 For the meaning of 'local authority' see para 301 note 12 ante.

2 The provisions of the Building Act 1984 s 99 (content and enforcement of notice requiring works) (see para 409 post), and s 102 (appeal against notice requiring works) (see para 421 post) apply in relation to a notice given under s 79(1), (2), subject to the following modifications: (1) s 99(1) requires the notice to indicate the nature of the works of repair or restoration and that of the works of demolition and removal of rubbish or material; and (2) s 99(2) authorises the local authority to execute, subject to that s 99(2), at its election either the works of repair or restoration or the works of demolition and removal of rubbish or material: s 79(3). As to the form, authentication and service of such notices see paras 418-420 post.

3 For the meaning of 'owner' see para 310 note 2 ante.

4 Building Act 1984 s 79(1). Section 79 (as amended) does not apply to inner London (see s 88(1); Sch 3 para 5; and para 303 ante) or to an advertisement as defined in the Town and Country Planning Act 1990 s 336(1) (as amended) (see TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) para 770) (Building Act 1984 s 79(4) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 67(4)(a))). For the meaning of 'inner London' see para 303 note 10 ante. The provisions of the Building Act 1984 s 79 (as amended) have effect subject to the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 (see TOWN AND COUNTRY PLANNING) relating to listed buildings, buildings subject to building preservation notices and buildings in conservation areas: Building Act 1984 s 79(5) (added by the Housing and Planning Act 1986 s 40, Sch 9 para 6(2); and amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 67(4)(b)).

As to the making of building regulations to modify or repeal the provisions of the Building Act 1984 s 79 (as amended), on the ground of inconsistency with other provisions, see s 1(3), Sch 1 para 11(1); and para 307 ante.

5 Ibid s 79(2)(a).

6 Ibid s 79(2)(b).

7 See note 2 supra.

8 Building Act 1984 s 79(2).

UPDATE

382-405 Specific Building Requirements

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

399 Building detrimental to amenities

NOTE 8--See *Liverpool City Council v Derwent Holdings Ltd* [2008] EWHC 679 (Admin), [2008] JPL 1768 (building debris left on site for over two years not seriously detrimental to amenity of neighbourhood).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/4. SPECIFIC BUILDING REQUIREMENTS/(4) DEFECTIVE AND DANGEROUS PREMISES/400. Notice to local authority of intended demolition.

400. Notice to local authority of intended demolition.

Provision is made in relation to any demolition of the whole or part of a building except:

- 307 (1) a demolition in pursuance of a demolition order or obstructive building order made under Part IX of the Housing Act 1985¹; and
 - 308 (2) a demolition:
- 11
- 15. (a) of an internal part of a building, where the building is occupied and it is intended that it should continue to be occupied²;
 - 16. (b) of a building that has a cubic content, as ascertained by external measurement, of not more than 1750 cubic feet, or, where a greenhouse, conservatory, shed or prefabricated garage forms part of a larger building, of that greenhouse, conservatory, shed or prefabricated garage³; or
 - 17. (c) without prejudice to head (2)(b) above, of an agricultural building⁴, unless it is contiguous to another building that is not itself an agricultural building or a building of a kind mentioned in head (2)(b) above⁵.
- 12

No person may begin a demolition for which such provision is made unless he has given the local authority⁶ notice of his intention to do so, and either the local authority has given a notice⁷ concerning demolition to him⁸, or the relevant period⁹ has expired¹⁰. Such a notice must specify the building to which it relates and the works of demolition intended to be carried out, and it is the duty of a person giving such a notice to a local authority to send or give a copy of it to certain persons¹¹. A person who contravenes¹² these requirements in relation to such a notice is liable on summary conviction to a fine¹³.

1 Building Act 1984 s 80(1)(a) (amended by the Housing (Consequential Provisions) Act 1985 s 4, Sch 2 para 58(3); and the Housing and Planning Act 1986 s 24(1)(j), Sch 5 Pt I para 11). The text refers to the Housing Act 1985 Pt IX (ss 264-323) (as amended): see HOUSING vol 22 (2006 Reissue) para 414 et seq.

The Building Act 1984 s 80 (as amended) does not apply to inner London: see s 88(1), Sch 3 para 5; and para 303 ante.

As to the making of building regulations to modify or repeal the provisions of s 80 (as amended), on the ground of inconsistency with other provisions, see s 1(3), Sch 1 para 11(1); and para 307 ante. For the meaning of 'inner London' see para 303 note 10 ante.

2 Ibid s 80(1)(b)(i).

3 Ibid s 80(1)(b)(ii).

4 For these purposes, 'agricultural building' has the same meaning as in any of the provisions of the Local Government Finance Act 1988 Sch 5 paras 3-7 (as amended) (see RATING AND COUNCIL TAX vol 39(1B) (Reissue) para 45 et seq); definition applied by the Building Act 1984 s 80(1)(b)(iii) (amended by the Local Government Finance (Miscellaneous Amendments and Repeal) Order 1990, SI 1990/1285, art 2).

5 Building Act 1984 s 80(1)(b)(iii).

6 For the meaning of 'local authority' see para 301 note 12 ante.

7 As to the form and service of such notices see paras 418, 420 post. As to the authentication of local authority notices see para 419 post.

8 le under the Building Act 1984 s 81 (as amended): see para 401 post.

9 For the meaning of 'the relevant period' see para 401 note 29 post.

10 Building Act 1984 s 80(2).

11 Ibid s 80(3). The persons to whom a copy must be given are: (1) the occupier of any building adjacent to the building (s 80(3)(a)); (2) any public gas supplier (as defined in the Gas Act 1986 Pt I (ss 4AA-48) (as amended) (see FUEL AND ENERGY vol 19(2) (2007 Reissue) para 807)) in whose authorised area (as so defined) the building is situated (Building Act 1984 s 80(3)(b) (substituted by the Gas Act 1986 s 67(1), Sch 7 para 30)); and (3) the public electricity supplier (as defined in the Electricity Act 1989 Pt I (ss 3A-64) (as amended) (see FUEL AND ENERGY vol 19(2) (2007 Reissue) para 1065)) in whose authorised area (as so defined) the building is situated and any other person authorised by a licence under the Electricity Act 1989 Pt I (as amended) to supply electricity to the building (Building Act 1984 s 80(3)(c) (substituted by the Electricity Act 1989 s 112(1), Sch 16 para 31)). The reference in the Building Act 1984 s 80(3)(b) (as amended) to any public gas supplier as defined in the Gas Act 1986 Pt I (as amended) (see FUEL AND ENERGY vol 19(2) (2007 Reissue) para 807) has effect as if it were a reference to a gas transporter as defined in the Gas Act 1986 Pt I (as amended): see the Gas Act 1995 s 16(1), Sch 4 para 2(2)(i); Utilities Act 2000 s 76(7). As to gas transporters see FUEL AND ENERGY vol 19(2) (2007 Reissue) para 835 et seq. The reference in the Building Act 1984 s 8(3)(c) to the public electricity supplier as defined in the Electricity Act 1989 Pt I (as amended) (see FUEL AND ENERGY vol 19(2) (2007 Reissue) para 1065) has effect as a reference to an electricity supplier, electricity distributor or both an electricity supplier and an electricity distributor according to the nature of the activities carried on by the persons to whom it referred before that time: see the Utilities Act 2000 s 31(1). As to electricity suppliers and electricity providers see FUEL AND ENERGY vol 19(2) (2007 Reissue) para 1033 et seq.

12 le a person who contravenes the Building Act 1984 s 80(2) (as amended) (see the text and notes 6-10 supra) For the meaning of 'contravenes' see para 310 note 10 ante.

13 Ibid s 80(4). The fine imposed is one not exceeding level 4 on the standard scale: s 80(4). As to the standard scale see para 313 note 7 ante.

UPDATE

382-405 Specific Building Requirements

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/4. SPECIFIC BUILDING REQUIREMENTS/(4) DEFECTIVE AND DANGEROUS PREMISES/401. Local authority's power to serve notice about demolition.

401. Local authority's power to serve notice about demolition.

A local authority¹ may give a notice about a demolition² which may require the person to whom it is given³:

- 309 (1) to shore up any building adjacent to the building to which the notice relates⁴;
- 310 (2) to weatherproof any surfaces of an adjacent building that are exposed by the demolition⁵;
- 311 (3) to repair and make good any damage to an adjacent building caused by the demolition or by the negligent act or omission of any person engaged in it⁶;
- 312 (4) to remove material or rubbish resulting from the demolition and clearance of the site⁷;
- 313 (5) to disconnect and seal, at such points as the local authority may reasonably require, any sewer⁸ or drain⁹ in or under the building¹⁰;
- 314 (6) to remove any such sewer or drain, and seal any sewer or drain with which the sewer or drain to be removed is connected¹¹;
- 315 (7) to make good to the satisfaction of the local authority the surface of the ground disturbed by anything done under head (5) or head (6) above¹²;
- 316 (8) to make arrangements with the relevant statutory undertakers¹³ for the disconnection of the supply of gas, electricity and water to the building¹⁴;
- 317 (9) to make such arrangements with regard to the burning of structures or materials on the site as may be reasonably required if the building is or forms part of special premises¹⁵, by the Health and Safety Executive¹⁶ and the fire authority¹⁷, and in any other case, by the fire authority¹⁸; and
- 318 (10) to take such steps relating to the conditions subject to which the demolition is to be undertaken, and the condition in which the site is to be left on completion of the demolition, as the local authority may consider reasonably necessary for the protection of the public and the preservation of public amenity¹⁹,

to any of the following persons:

- 319 (a) a person on whom a demolition order or obstructive building order has been served under Part IX of the Housing Act 1985²⁰;
- 320 (b) a person who appears to it not to be intending to comply with an order²¹ made with regard to a dangerous building or a notice²² given with regard to dilapidated buildings and neglected sites²³; and
- 321 (c) a person who appears to it to have begun or to be intending to begin a demolition²⁴.

Where a person has given a notice²⁵ to a local authority of an intended demolition²⁶, or the local authority has served a demolition order or obstructive building order on a person under Part IX of the Housing Act 1985²⁷, a local authority's notice about a demolition²⁸ may only be given to the person in question within the relevant period²⁹. It is the duty of the local authority to send or give a copy of such a local authority's notice about a demolition to the owner³⁰ and occupier of any building adjacent to the building to which the notice relates³¹.

1 For the meaning of 'local authority' see para 301 note 12 ante.

2 Ie a notice under the Building Act 1984 s 81(1) (as amended): see the text and note 3 infra. The provisions of s 99 (content and enforcement of notice requiring works) (see para 409 post), and s 102 (appeal against notice requiring works) (see para 421 post) apply in relation to a notice given under s 81(1): ss 82(6), 83(1). Among the grounds on which an appeal may be brought under s 102 against such a notice are: (1) in the case of a notice requiring an adjacent building to be shored up, that the owner of the building is not entitled to the support of that building by the building that is being demolished, and ought to pay, or contribute towards, the expenses of shoring it up (s 83(2)(a)); (2) in the case of a notice requiring any surfaces of an adjacent building to be weatherproofed, that the owner of the adjacent building ought to pay, or contribute towards, the expenses of weatherproofing those surfaces (s 83(2)(b)). Where the grounds on which an appeal under s 102 is brought include a ground specified in s 83(2): (a) the appellant must serve a copy of his notice of appeal on the person or persons referred to in that ground of appeal (s 83(3)(a)); and (b) on the hearing of the appeal the court may make such order as it thinks fit in respect of the payment of, or contribution towards, the cost of the works by any such person, or as to how any expenses that may be recoverable by the local authority are to be borne between the appellant and any such person (s 83(3)(b)). For the meaning of 'owner' see para 310 note 2 ante. As to the form, authentication and service of such notices see paras 418-420 post.

A notice under s 81 (as amended) is necessary before a person who has given notice of his intention to undertake a demolition may begin: see s 80(2); and para 400 ante. Where a local authority has power to serve a notice under s 81 (as amended) on a person undertaking a demolition, s 62 (see para 385 ante) (disconnecting drains) does not apply: see s 62(6); and para 385 ante.

Nothing contained in a notice under s 81 (as amended) prejudices or affects the operation of any of the relevant statutory provisions, as defined in the Health and Safety at Work etc Act 1974 s 53(1) (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302); and accordingly, if a requirement of such a notice is inconsistent with a requirement imposed by or under the Health and Safety at Work etc Act 1974, the latter requirement prevails: Building Act 1984 s 81(2).

3 Ibid ss 81(1), 82(1).

4 Ibid s 82(1)(a). Sections 81, 82, (both as amended), and s 83 do not apply to inner London: see s 88(1); Sch 3 para 5; and para 303 ante. For the meaning of 'inner London' see para 303 note 10 ante.

As to the making of building regulations to modify or repeal the provisions of ss 81, 82 (both as amended), and s 83, on the ground of inconsistency with other provisions, see s 1(3), Sch 1 para 11(1); and para 307 ante.

5 Ibid s 82(1)(b).

6 Ibid s 82(1)(c). No one may be required under s 82(1)(c), (e), (f) (see heads (3), (5) and (6) in the text) to carry out any work in land outside the premises on which the works of demolition are being carried out if he has no right to carry out that work, but, subject to s 101 (as amended) (breaking open of streets) (see para 411 post), the person undertaking the demolition, or the local authority acting in his default, may break open any street for the purpose of complying with any such requirement: s 82(2). As to the meaning of 'premises' see para 310 note 2 ante. As to the meaning of 'street' see para 385 note 15 ante.

7 Ibid s 82(1)(d).

8 As to the meaning of 'sewer' see para 333 note 7 ante.

9 For the meaning of 'drain' see para 333 note 6 ante.

10 Building Act 1984 s 82(1)(e). See note 6 supra. Before a person complies with a requirement under s 82(1)(e), (f), (g) (see heads (5), (6) and (7) in the text), he must give to the local authority at least 48 hours' notice, in the case of a requirement under head (5) or head (6) in the text, or at least 24 hours' notice, in the case of a requirement under head (7) in the text, and a person who fails to comply with s 82(3) is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 82(3). As to the standard scale see para 313 note 7 ante.

11 Ibid s 82(1)(f). See notes 6, 10 supra.

12 Ibid s 82(1)(g). See note 10 supra.

13 For the meaning of 'statutory undertakers' see para 313 note 10 ante. The provisions of ibid s 82 (as amended) do not authorise interference with apparatus or works of statutory undertakers authorised by an enactment to carry on an undertaking for the supply of electricity, or gas or with apparatus or works of a water undertaker or sewerage undertaker: s 82(4) (amended by the Water Act 1989 s 190, Sch 25 para 70(2)(a)). As to the meaning of 'enactment' see para 305 note 2 ante. The reference in the Building Act 1984 s 82(4) (as amended) to a person authorised by an enactment to carry on an undertaking for the supply of electricity is to

be construed as a reference to a holder of a licence under the Electricity Act 1989 s 6 (as substituted) (see FUEL AND ENERGY vol 19(2) (2007 Reissue) para 1065): see s 112(1), Sch 16 para 1(7) (as amended). The reference in the Building Act 1984 s 82(4) (as amended) to a person authorised by an enactment to carry on an undertaking for the supply of gas is to be construed as a reference to a gas transporter: see the Gas Act 1995 s 16(1), Sch 4 para 2(8); Utilities Act 2000 s 76(7). As to gas transporters see FUEL AND ENERGY vol 19(2) (2007 Reissue) para 835 et seq.

Without prejudice to the generality of the Building Act 1984 s 82(4) (as amended), s 82 (as amended) does not exempt a person from:

- 39 (1) the obligation to obtain any consent required under the Water Industry Act 1991 s 174 (see WATER AND WATERWAYS vol 101 (2009) PARA 486) or the Water Resources Act 1991 s 176 (as amended) (see WATER AND WATERWAYS vol 100 (2009) PARAS 442, 445) (interference with water supplies or with waterworks) (Building Act 1984 s 82(5)(a) (amended by the Water Act 1989 Sch 25 para 70(2)(b)); and the Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1 para 39(1), (4));
- 40 (2) criminal liability under any enactment relating to the supply of gas or electricity (Building Act 1984 s 82(5)(b)); or
- 41 (3) the requirements of regulations relating to public safety under the Gas Act 1972 s 31 (repealed: see now as to safety regulations the Gas Act 1986 s 18 (as amended) (see FUEL AND ENERGY vol 19(2) (2007 Reissue) para 900)) (Building Act 1984 s 82(5)(c)).

14 Ibid s 82(1)(h). If a notice under s 81 (as amended) contains such a requirement as is specified in s 82(1)(h), it is the duty of the local authority to send or give a copy of it to the statutory undertakers concerned: s 81(6)(a).

15 For the purposes of ibid ss 81, 82 (both as amended), 'special premises' means premises for which a fire certificate is required by virtue of regulations under the Health and Safety at Work etc Act 1974 (see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 660 et seq): Building Act 1984 s 81(7).

16 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

17 For these purposes, 'fire authority' has the same meaning as in the Fire Precautions Act 1971 s 43(1) (see FIRE SERVICES vol 18(2) (Reissue) para 17): Building Act 1984 s 126.

18 Ibid s 82(1)(i). If a notice under s 81 (as amended) contains such a requirement as is specified in s 82(1)(i), it is the duty of the local authority to send or give a copy of it to the fire authority, if it is not itself the fire authority, and to the Health and Safety Executive, if the premises are special premises: s 81(6)(b).

19 Ibid s 82(1)(j).

20 Ibid s 81(1)(a) (amended by the Housing (Consequential Provisions) Act 1985 s 4, Sch 2 para 58(1), (3); and the Housing and Planning Act 1986 s 24(1)(j), Sch 5 Pt I para 11(1)). The text refers to the Housing Act 1985 Pt IX (ss 264-323) (as amended) (HOUSING vol 22 (2006 Reissue) para 414 et seq).

21 Ie an order under the Building Act 1984 s 77 (as amended): see para 398 ante.

22 Ie a notice under ibid s 79 (as amended): see para 399 ante.

23 Ibid s 81(1)(b).

24 Ibid s 81(1)(c). The text refers to a demolition to which s 80 (as amended) (see para 400 ante) otherwise applies: see s 81(1)(c).

25 Ie under ibid s 80 (as amended): see para 400 ante.

26 Ibid s 81(3)(a).

27 Ibid s 81(3)(b) (amended by the Housing (Consequential Provisions) Act 1985 Sch 2 para 58(1), (3); and the Housing and Planning Act 1986 Sch 5 Pt I para 11(1)).

28 Ie under the Building Act 1984 s 81 (as amended).

29 For the purposes of ibid ss 80, 81 (both as amended), 'the relevant period' means:

- 42 (1) in a case such as is mentioned in s 81(3)(a) (as amended) (see the text to notes 25-26 supra), six weeks from the giving of the notice under s 80 (as amended) (see para 400 ante), or such longer period as the person who gave that notice may in writing allow (s 81(4)(a)); and
- 43 (2) in a case such as is mentioned in s 81(3)(b) (as amended) (see the text to note 27 supra), seven days after the local authority served a copy of the demolition order or obstructive building order in accordance with the Housing Act 1985 Pt IX, or such longer period as the person on whom the copy was served may in writing allow (Building Act 1984 s 81(4)(b) (amended by the Housing (Consequential Provisions) Act 1985 Sch 2 para 58(1), (3); and the Housing and Planning Act 1986 Sch 5 Pt I para 11(1))).

30 For the meaning of 'owner' see para 310 note 2 ante.

31 Building Act 1984 s 81(5).

UPDATE

382-405 Specific Building Requirements

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

401 Local authority's power to serve notice about demolition

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 15--1984 Act s 81(7) repealed: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

NOTE 17--Now 'fire and rescue authority': 1984 Act s 126 (definition substituted by SI 2005/1541; see NOTE 15). 1971 Act replaced: SI 2005/1541.

NOTE 18--1984 Act ss 81(6)(b), 82(1)(i) substituted: SI 2005/1541 (see NOTE 15).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/4. SPECIFIC BUILDING REQUIREMENTS/(5) YARDS, PASSAGES AND COURTYARDS/402. Paving and drainage of yards and passages.

(5) YARDS, PASSAGES AND COURTYARDS

402. Paving and drainage of yards and passages.

If a court or yard appurtenant to, or a passage giving access to¹, houses² and industrial and commercial buildings is not so formed, flagged, asphalted or paved, or is not provided with such works on, above or below its surface, as to allow of the satisfactory drainage of its surface or subsoil to a proper outfall, the local authority³ may by notice⁴ require any person who is the owner⁵ of any of the buildings to execute all such works as may be necessary to remedy the defect⁶. This applies in relation to any court, yard or passage that is used in common by the occupiers of two or more houses, or a house and a commercial or industrial building, but is not a highway maintainable at the public expense⁷.

1 This does not include a path in the owner's garden leading from his front gate to the door of his house: *Denton UDC v Bursted Properties Ltd* [1955] 1 All ER 273, [1955] 1 WLR 82, DC.

2 For the meaning of 'house' see para 313 note 10 ante.

3 For the meaning of 'local authority' see para 301 note 12 ante.

4 The provisions of the Building Act 1984 s 99 (content and enforcement of notice requiring works) (see para 409 post), and s 102 (appeal against notice requiring works) (see para 421 post) apply in relation to a notice given under s 84(1): s 84(2). As to the form, authentication and service of such notices see paras 418-420 post.

5 For the meaning of 'owner' see para 310 note 2 ante.

6 Building Act 1984 s 84(1), (3).

As to the making of building regulations to modify or repeal the provisions of s 84 on the ground of inconsistency with other provisions, see s 1(3), Sch 1 para 11(1); and para 307 ante.

7 Ibid s 84(4). As to highways maintainable at the public expense see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) paras 247-248.

UPDATE

382-405 Specific Building Requirements

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/4. SPECIFIC BUILDING REQUIREMENTS/(5) YARDS, PASSAGES AND COURTYARDS/403. Maintenance of entrances to courtyards.

403. Maintenance of entrances to courtyards.

Except with the consent¹ of the local authority² an entrance to a court or yard on which two or more houses³ front or abut must not be closed, narrowed, reduced in height or otherwise altered so as to impede the free circulation of air through the entrance⁴, and no permanent structure may be erected so as to impede the free circulation of air through such an entrance⁵. A local authority in giving such a consent may impose such conditions as it thinks fit with respect to the provision of other openings or means of access, or other means for securing free circulation of air throughout the court or yard⁶.

A person aggrieved⁷ by the refusal of a local authority to give such a consent, or by a condition imposed by it, may appeal to a magistrates' court⁸. A person who contravenes⁹ the provisions described above is liable on summary conviction to a fine¹⁰ and also to a further fine for each day on which the offence continues after he is convicted¹¹.

1 As to the form, authentication and the giving of a consent see paras 418-420 post.

2 For the meaning of 'local authority' see para 301 note 12 ante.

3 For the meaning of 'house' see para 313 note 10 ante.

4 Building Act 1984 s 85(1)(a).

Section 85 does not apply to inner London: see s 88(1), Sch 3 para 5; and para 303 ante. For the meaning of 'inner London' see para 303 note 10 ante.

As to the making of building regulations to modify or repeal the provisions of s 85 on the ground of inconsistency with other provisions, see s 1(3), Sch 1 para 11(1); and para 307 ante.

5 Ibid s 85(1)(b). See note 4 supra.

6 Ibid s 85(2). See note 4 supra.

7 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARA 656.

8 Building Act 1984 s 85(3). See note 4 supra. As to magistrates' courts see MAGISTRATES. As to appeals generally see paras 422-423 post.

9 For the meaning of 'contravene' see para 310 note 10 ante.

10 I.e. a fine not exceeding level 1 on the standard scale: Building Act 1984 s 84(4). As to the standard scale see para 313 note 7 ante.

11 Ibid s 85(4). See note 4 supra. The fine imposed must not exceed £2 for each day on which the default continues after conviction: see s 85(4). As to continuing offences see para 427 post.

UPDATE

382-405 Specific Building Requirements

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/4. SPECIFIC BUILDING REQUIREMENTS/(6) APPEALS/404. Appeal to Crown Court.

(6) APPEALS

404. Appeal to Crown Court.

Appeals in respect of certain matters lie to the Crown Court. Where a person is aggrieved¹ by an order, determination or other decision of a magistrates' court² under Part III of the Building Act 1984³, or under Part IV of that Act⁴ as it applies in relation to Part III, and is not by any other enactment⁵ authorised to appeal to the Crown Court, he may appeal to the Crown Court⁶. However, this does not confer a right of appeal in a case in which each of the parties concerned might under the Building Act 1984 have required that the dispute should be determined by arbitration instead of by a magistrates' court⁷.

1 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARA 656.

2 As to magistrates' courts see MAGISTRATES.

3 Ie the Building Act 1984 Pt III (ss 59-90) (as amended): see para 382 et seq ante.

4 Ie ibid Pt IV (ss 91-131) (as amended): see para 352 et seq ante.

5 As to the meaning of 'enactment' see para 305 note 2 ante.

6 Building Act 1984 s 86(1).

As to the making of building regulations to modify or repeal the provisions of s 86 on the ground of inconsistency with other provisions, see s 1(3), Sch 1 para 11(1); and para 307 ante.

7 Ibid s 86(2). As to arbitrations under the Building Act 1984 see para 333 note 16 ante. As to arbitration generally see ARBITRATION vol 2 (2008) PARA 1201 et seq.

UPDATE

382-405 Specific Building Requirements

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/4. SPECIFIC BUILDING REQUIREMENTS/(7) CROWN PROPERTY/405. Application of Part III of the Building Act 1984 to Crown property.

(7) CROWN PROPERTY

405. Application of Part III of the Building Act 1984 to Crown property.

Provision is made in relation to the application of Part III of the Building Act 1984¹ to any house², building³ or other premises⁴ being property belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, or belonging to the Duchy of Cornwall, or belonging to a government department, or held in trust for Her Majesty for purposes of a government department⁵. In relation to any such property, the appropriate authority⁶ may agree with the council of the county⁷, or the local authority⁸ of the district⁹, in which the property is situated that any particular provisions of Part III of the Building Act 1984, and of Part IV of that Act¹⁰ so far as it relates to Part III, apply to the property, and, while the agreement is in force, those provisions apply to that property accordingly, subject to the terms of the agreement¹¹. Any such agreement may contain such consequential and incidental provisions (including, with the approval of the Treasury, provisions of a financial character) as appear to the appropriate authority to be necessary or equitable¹².

1 Ie the Building Act 1984 Pt III (ss 59-90) (as amended): see para 382 et seq ante.

2 For the meaning of 'house' see para 313 note 10 ante.

3 For the meaning of 'building' see para 305 ante.

4 As to the meaning of 'premises' see para 310 note 2 ante.

5 Building Act 1984 s 87(1).

As to the making of building regulations to modify or repeal the provisions of s 87 on the ground of inconsistency with other provisions, see s 1(3), Sch 1 para 11(1); and para 307 ante.

6 For these purposes, 'the appropriate authority' means, in the case of property belonging to:

44 (1) Her Majesty in right of the Crown, the Crown Estate Commissioners or other government department having the management of the property (ibid s 87(4)(a));

45 (2) Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy (s 87(4)(b));

46 (3) the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints (s 87(4)(c)); and

47 (4) a government department or held in trust for Her Majesty for purposes of a government department, that department (s 87(4)(d)),

and, if a question arises as to what authority is the appropriate authority in relation to any property, that question must be referred to the Treasury, whose decision is final: s 87(4). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

7 Ibid s 87(2)(a).

8 For the meaning of 'local authority' see para 301 note 12 ante.

9 Ie the Building Act 1984 Pt IV (ss 91-131) (as amended): see para 352 et seq ante.

10 Ibid s 87(2)(b).

11 Ibid s 87(2). Section 87(2) applies in relation to property in Wales as if in s 87(2)(a) (see the text to note 7 supra) the reference to a county included a reference to a county borough, and as if s 87(2)(b) (see the text to notes 8-10 supra) were omitted: s 87(2A) (added by the Local Government (Wales) Act 1994 s 22(3), Sch 9 para 15(2)). As to areas and authorities in Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 37 et seq.

12 Building Act 1984 s 87(3).

UPDATE

382-405 Specific Building Requirements

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/5. ADMINISTRATIVE MATTERS UNDER THE BUILDING ACT 1984/(1) ENTRY ON PREMISES AND EXECUTION OF WORKS/406. Power to enter premises.

5. ADMINISTRATIVE MATTERS UNDER THE

(1) ENTRY ON PREMISES AND EXECUTION OF WORKS

406. Power to enter premises.

An authorised officer¹ of a local authority², on producing, if so required, some duly authenticated document³ showing his authority, has a right to enter any premises⁴ at all reasonable hours:

- 322 (1) for the purpose of ascertaining whether there is, or has been, on or in connection with the premises, a contravention⁵ of the Building Act 1984, or of any building regulations⁶, that it is the duty of the local authority to enforce⁷;
- 323 (2) for the purpose of ascertaining whether or not circumstances exist that would authorise or require the local authority to take any action, or execute any work, under that Act or under building regulations⁸;
- 324 (3) for the purpose of taking any action, or executing any work, authorised or required by that Act, or by building regulations, or by an order made under the Act, to be taken, or executed, by the local authority⁹; or
- 325 (4) generally for the purpose of the performance by the local authority of its functions¹⁰ under that Act or under building regulations¹¹.

Admission to premises, other than a factory¹² or workplace¹³, must not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier¹⁴. If it is shown to the satisfaction of a justice of the peace¹⁵ on sworn information in writing that:

- 326 (a) admission to any premises has been refused or refusal is apprehended, or the premises are unoccupied, or the occupier is temporarily absent, or the case is one of urgency, or an application for admission would defeat the object of the entry¹⁶; and
- 327 (b) there is reasonable ground for entry into the premises for any of the purposes mentioned in head (1) above¹⁷,

the justice may by warrant under his hand authorise the local authority by any authorised officer to enter the premises, if need be by force¹⁸. A warrant must not be issued unless the justice is satisfied that: (i) notice of the intention to apply for a warrant has been given to the occupier¹⁹; or (ii) the premises are unoccupied, or the occupier is temporarily absent, or the case is one of urgency, or the giving of the notice would defeat the object of the entry²⁰. A warrant continues in force until the purpose for which the entry is necessary has been satisfied²¹.

An authorised officer entering premises²² may take with him such other persons as may be necessary, and on leaving unoccupied premises that he has entered by virtue of a warrant he must leave them as effectually secured against trespassers as he found them²³. A person who is admitted into a factory or workplace²⁴ and discloses to another person information obtained by him in the factory or workplace with regard to a manufacturing process or trade secret, is liable

on summary conviction to a fine²⁵ or to imprisonment²⁶, unless the disclosure was made in the performance of his duty²⁷.

1 For the meaning of 'authorised officer' see para 384 note 10 ante. In relation to the Inner Temple and the Middle Temple, a reference in a provision of the Building Act 1984 Pt IV (ss 91-131) (as amended) to the proper officer or an officer or authorised officer of a local authority is a reference to an officer authorised by the Sub-Treasurer or the Under Treasurer, as the case may be, to act for the purposes of that provision: s 127. For the meaning of 'proper officer' see para 384 note 9 ante.

2 For the meaning of 'local authority' see para 301 note 12 ante.

3 As to the authentication of documents see para 419 post.

4 As to the meaning of 'premises' see para 310 note 2 ante.

5 As to the meaning of 'contravention' see para 310 note 10 ante.

6 For the meaning of 'building regulations' see para 306 ante.

7 Building Act 1984 s 95(1)(a). As to the making of building regulations to modify or repeal the provisions of ss 95, 96 on the ground of inconsistency with other provisions see s 1(3), Sch 1 para 11(1); and para 307 ante.

8 Ibid s 95(1)(b).

9 Ibid s 95(1)(c).

10 As to the meaning of 'functions' see para 303 note 19 ante.

11 Building Act 1984 s 95(1)(d).

12 'Factory' has the meaning given by the Factories Act 1961 s 175 (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 318): Building Act 1984 s 126.

13 As to the meaning of 'workplace' see para 387 note 24 ante.

14 Building Act 1984 s 95(2).

15 As to justices of the peace see generally MAGISTRATES.

16 Building Act 1984 s 95(3)(a).

17 Ibid s 95(3)(b).

18 Ibid s 95(3).

19 Ibid s 95(4)(a).

20 Ibid s 95(4)(b).

21 Ibid s 96(2).

22 Ie by virtue of ibid s 95 or of a warrant issued under that section: see the text and notes 1-20 supra.

23 Ibid s 96(1).

24 Ie in compliance with ibid s 95 or a warrant issued under that section: see the text and notes 1-20 supra.

25 Ie a fine not exceeding level 3 on the standard scale: ibid s 96(3). As to the standard scale see para 313 note 7 ante.

26 Ie for a term not exceeding three months: ibid s 96(3).

27 Ibid s 96(3).

UPDATE

406-427 Administrative Matters Under the Building Act 1984

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/5. ADMINISTRATIVE MATTERS UNDER THE BUILDING ACT 1984/(1) ENTRY ON PREMISES AND EXECUTION OF WORKS/407. Power to execute work.

407. Power to execute work.

A local authority¹ may, by agreement with the owner² or occupier of any premises³, itself execute at his expense any work that it has under the Building Act 1984 required him to execute, or any work in connection with the construction, laying, alteration or repair of a sewer⁴ or drain⁵ that the owner or occupier is entitled to execute, and for that purpose it has all the rights that he would have⁶.

1 For the meaning of 'local authority' see para 301 note 12 ante.

2 For the meaning of 'owner' see para 310 note 2 ante.

3 As to the meaning of 'premises' see para 310 note 2 ante.

4 As to the meaning of 'sewer' see para 333 note 7 ante.

5 For the meaning of 'drain' see para 333 note 6 ante.

6 Building Act 1984 s 97. As to the making of building regulations to modify or repeal the provisions of s 97 on the ground of inconsistency with other provisions see s 1(3), Sch 1 para 11(1); and para 307 ante.

UPDATE

406-427 Administrative Matters Under the Building Act 1984

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/5. ADMINISTRATIVE MATTERS UNDER THE BUILDING ACT 1984/(1) ENTRY ON PREMISES AND EXECUTION OF WORKS/408. Power to require occupier to permit work.

408. Power to require occupier to permit work.

If, on a complaint made by the owner¹ of premises², it appears to a magistrates' court that the occupier of those premises is preventing the owner from executing any work that he is by or under the Building Act 1984 required to execute, the court may order the occupier to permit the execution of the work³.

1 For the meaning of 'owner' see para 310 note 2 ante.

2 As to the meaning of 'premises' see para 310 note 2 ante.

3 Building Act 1984 s 98. As to the making of building regulations to modify or repeal the provisions of s 98 on the ground of inconsistency with other provisions see s 1(3), Sch 1 para 11(1); and para 307 ante. As to magistrates' courts see MAGISTRATES.

UPDATE

406-427 Administrative Matters Under the Building Act 1984

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/5. ADMINISTRATIVE MATTERS UNDER THE BUILDING ACT 1984/(1) ENTRY ON PREMISES AND EXECUTION OF WORKS/409. Content and enforcement of notice requiring works.

409. Content and enforcement of notice requiring works.

Certain notices under the Building Act 1984¹ must indicate the nature of the works to be executed and state the time within which they are to be executed². Subject to any right of appeal³, if the person required by such a notice to execute works fails to execute them within the time limited by the notice the local authority⁴ may itself execute the works and recover from that person the expenses reasonably incurred by it in doing so⁵, and without prejudice to that power, he is liable on summary conviction to a fine⁶ and to a further fine for each day on which the default continues after he is convicted⁷.

¹ I.e. a notice in relation to which it is declared by any provision of the Building Act 1984 that s 99 applies: see s 99(1). Section 99 is expressly applied by s 2(5) (see para 310 ante), s 59(2) (see para 382 ante), s 60(5) (see para 383 ante), s 64(3) (see para 387 ante), s 65(3) (see para 388 ante), s 66(5) (see para 389 ante), s 68(5) (see para 391 ante), s 70(2) (see para 392 ante), s 71(2) (see para 393 ante), s 72(2) (see para 394 ante), s 74(4) (see para 396 ante), s 79(3) (see para 399 ante), s 82(6) (see para 401 ante), s 84(2) (see para 402 ante).

² Ibid s 99(1). Section 99 has effect subject to any modification specified in the provision under which the notice is given: s 99(3). As to the meaning of 'modifications' see para 303 note 22 ante. As to the making of building regulations to modify or repeal the provisions of s 99 on the ground of inconsistency with other provisions see s 1(3), Sch 1 para 11(1); and para 307 ante.

As to the recovery of expenses generally see paras 413-414 post.

³ I.e. conferred by ibid s 102: see para 421 post.

⁴ For the meaning of 'local authority' see para 301 note 12 ante.

⁵ Building Act 1984 s 99(2)(a). See also note 2 supra.

⁶ I.e. a fine not exceeding level 4 on the standard scale: ibid s 99(2)(b). As to the standard scale see para 313 note 7 ante.

⁷ Ibid s 99(2)(b). The fine imposed must not exceed £2 for each day on which the default continues after conviction: see s 99(2)(b). See also note 2 supra. As to continuing offences see para 427 post.

UPDATE

406-427 Administrative Matters Under the Building Act 1984

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/5. ADMINISTRATIVE MATTERS UNDER THE BUILDING ACT 1984/(1) ENTRY ON PREMISES AND EXECUTION OF WORKS/410. Sale of materials.

410. Sale of materials.

A local authority¹ may sell any materials that: (1) have been removed by it from any premises², including a street³, when executing works under the Building Act 1984 or otherwise carrying the Act into effect⁴; and (2) are not before the expiration of three days from the date of their removal claimed by the owner⁵ and taken away by him⁶. Where a local authority sells such materials, it must pay the proceeds to the person to whom the materials belonged, after deducting the amount of any expenses recoverable by it from him⁷. This power does not apply to refuse removed by a local authority⁸.

1 For the meaning of 'local authority' see para 301 note 12 ante.

2 As to the meaning of 'premises' see para 310 note 2 ante.

3 As to the meaning of 'street' see para 385 note 15 ante.

4 Building Act 1984 s 100(1)(a). As to the making of building regulations to modify or repeal the provisions of s 100 on the ground of inconsistency with other provisions see s 1(3), Sch 1 para 11(1); and para 307 ante.

5 For the meaning of 'owner' see para 310 note 2 ante.

6 Building Act 1984 s 100(1)(b).

7 Ibid s 100(2).

8 Ibid s 100(3).

UPDATE

406-427 Administrative Matters Under the Building Act 1984

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/5. ADMINISTRATIVE MATTERS UNDER THE BUILDING ACT 1984/(1) ENTRY ON PREMISES AND EXECUTION OF WORKS/411. Breaking open of streets.

411. Breaking open of streets.

Where, under the Building Act 1984, local authorities¹ have power to construct, lay or maintain sewers², drains³ or pipes, the provisions relating to the power to lay pipes in streets under the Water Industry Act 1991⁴ apply, with the necessary modifications⁵, as they apply for the purpose of conferring power on a water undertaker⁶ or sewerage undertaker⁷ to lay a relevant pipe⁸. Those provisions also apply so far as necessary for the purposes of any power to lay or maintain a sewer or drain which is conferred by the Building Act 1984 on a person other than a local authority⁹.

1 For the meaning of 'local authority' see para 301 note 12 ante.

2 As to the meaning of 'sewer' see para 333 note 7 ante.

3 For the meaning of 'drain' see para 333 note 6 ante

4 Ie the Water Industry Act 1991 s 158 (as amended): see WATER AND WATERWAYS vol 101 (2009) PARA 462.

5 As to the meaning of 'modifications' see para 303 note 22 ante.

6 As to water undertakers see WATER AND WATERWAYS vol 100 (2009) PARA 137 et seq; WATER AND WATERWAYS vol 101 (2009) PARA 318 et seq.

7 As to sewerage undertakers see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 999 et seq.

8 Building Act 1984 s 101(1) (amended by the Water Act 1989 s 190, Sch 25 para 70; and the Water Consolidation (Consequential Provisions) Act 1991 s 2, Sch 1 para 39(1), (5)). 'Relevant pipe' means a relevant pipe within the meaning of the Water Industry Act 1991 s 158(7) (see WATER AND WATERWAYS vol 101 (2009) PARA 462): see the Building Act 1984 s 101(1) (as so amended).

As to the making of building regulations to modify or repeal the provisions of s 101 (as amended) on the ground of inconsistency with other provisions see the Building Act 1984 s 1(3), Sch 1 para 11(1); and para 307 ante.

9 Ibid s 101(2) (substituted by the Water Act 1989 s 190, Sch 25 para 70; and amended by the Water Consolidation (Consequential Provisions) Act 1991 s 2, Sch 1 para 39(5)).

UPDATE

406-427 Administrative Matters Under the Building Act 1984

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/5. ADMINISTRATIVE MATTERS UNDER THE BUILDING ACT 1984/(2) COMPENSATION AND RECOVERY/412. Compensation for damage.

(2) COMPENSATION AND RECOVERY

412. Compensation for damage.

A local authority¹ must make full compensation to a person who has sustained damage by reason of the exercise by the authority, in relation to a matter as to which he has not himself been in default, of any of its powers under the Building Act 1984². Any dispute as to the fact of damage, or as to the amount of compensation, must be determined by arbitration³. However, if the compensation claimed does not exceed £50, all questions as to the fact of damage, liability to pay compensation and the amount of compensation may on the application of either party be determined by, and any compensation awarded may be recovered before, a magistrates' court⁴.

1 For the meaning of 'local authority' see para 301 note 12 ante.

2 Building Act 1984 s 106(1). As to the making of building regulations to modify or repeal the provisions of s 106 on the ground of inconsistency with other provisions see s 1(3), Sch 1 para 11(1); and para 307 ante.

3 Ibid s 106(2). As to arbitrations under the Building Act 1984 see para 333 note 16 ante.

4 Ibid s 106(3). As to the procedure on application to a magistrates' court see para 422 post.

UPDATE

406-427 Administrative Matters Under the Building Act 1984

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/5. ADMINISTRATIVE MATTERS UNDER THE BUILDING ACT 1984/(2) COMPENSATION AND RECOVERY/413. Recovery of expenses.

413. Recovery of expenses.

Where a local authority¹ has incurred expenses for whose repayment the owner² of the premises³ in respect of which the expenses were incurred is liable, either under the Building Act 1984 or by agreement with the authority, those expenses, together with interest from the date of service of a demand for the expenses⁴, may be recovered by the authority:

- 328 (1) from the person who is the owner of the premises at the date on which the works are completed⁵; or
- 329 (2) if he has ceased to be the owner of the premises before the date on which a demand for the expenses is served, either from him or from the person who is the owner at the date on which the demand is served⁶.

As from the date of the completion of the works, the expenses and interest accrued due on it are, until recovered, a charge⁷ on the premises and on all estates and interests in them⁸.

A sum that a local authority is entitled to recover under the Building Act 1984, and with respect to whose recovery provision is not made by any other provision of the Act, may be recovered as a simple contract debt in any court of competent jurisdiction⁹.

A local authority may by order declare any expenses recoverable by it¹⁰ to be payable with interest¹¹ by instalments within a period not exceeding 30 years, until the whole amount is paid¹². Such an order may be made at any time with respect to an unpaid balance of expenses and accrued interest, but the period for repayment must not in any case extend beyond 30 years from the service of the first demand for the expenses¹³. Any such instalments and interest, or any part of it, may be recovered from the owner or occupier for the time being of the premises in respect of which the expenses were incurred, and, if recovered from the occupier, may be deducted by him from the rent of the premises¹⁴. However, an occupier is not required to pay at any one time a sum in excess of the amount that was due from him on account of rent at¹⁵, or has become due from him on account of rent since¹⁶, the date on which he received a demand from the local authority together with a notice requiring him not to pay rent to his landlord without deducting the demanded sum¹⁷.

1 For the meaning of 'local authority' see para 301 note 12 ante.

2 For the meaning of 'owner' see para 310 note 2 ante.

3 As to the meaning of 'premises' see para 310 note 2 ante.

4 The rate of interest chargeable under the Building Act 1984 s 107(1) is such reasonable rate as the authority may determine: s 107(3). As to the making of building regulations to modify or repeal the provisions of ss 107, 108 on the ground of inconsistency with other provisions see s 1(3), Sch 1 para 11(1); and para 307 ante.

5 Ibid s 107(1)(a).

6 Ibid s 107(1)(b).

7 For the purposes of enforcing such a charge, a local authority has all the same powers and remedies under the Law of Property Act 1925 and otherwise as if it was mortgagee by deed having power of sale and lease, of accepting surrenders of leases and of appointing a receiver: Building Act 1984 s 107(2).

8 Ibid s 107(1). Nothing in the Building Act 1984 about the recovery of expenses from owners of premises affects the Local Land Charges Act 1975 (see LAND CHARGES vol 26 (2004 Reissue) para 671 et seq): Building Act 1984 s 129.

9 Ibid s 107(4). Where a person has been given a notice in relation to which s 102 (see para 421 post) applies, and the local authority takes proceedings against him for the recovery of expenses that it is entitled to recover from him, it is not open to him to raise any question that he could have raised on an appeal under s 102: s 107(5).

10 Ie under ibid s 107(1): see the text and notes 1-8 supra.

11 The rate of interest chargeable under ibid s 108(1) is such reasonable rate as the authority may determine: ibid s 108(4).

12 Ibid s 108(1).

13 Ibid s 108(2).

14 Ibid s 108(3).

15 Ibid s 108(3)(a).

16 Ibid s 108(3)(b).

17 Ibid s 108(3).

UPDATE

406-427 Administrative Matters Under the Building Act 1984

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/5. ADMINISTRATIVE MATTERS UNDER THE BUILDING ACT 1984/(2) COMPENSATION AND RECOVERY/414. Liability of agent or trustee.

414. Liability of agent or trustee.

Where a local authority¹ claims to recover expenses under the Building Act 1984 from a person as being the owner² of the premises³ in respect of which the expenses were incurred, and that person proves that:

- 330 (1) he is receiving the rent of those premises merely as agent or trustee for some other person⁴; and
- 331 (2) he has not, and since the date of the service⁵ on him of a demand for payment has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the authority⁶,

his liability is limited to the total amount of the money that he has or has had in his hands⁷. However, a local authority which is, or would be, so debarred from recovering the whole of any such expenses from an agent or trustee may recover the whole or any unpaid balance of it from the person on whose behalf the agent or trustee receives the rent⁸.

1 For the meaning of 'local authority' see para 301 note 12 ante.

2 For the meaning of 'owner' see para 310 note 2 ante.

3 As to the meaning of 'premises' see para 310 note 2 ante.

4 Building Act 1984 s 110(a).

5 As to the service of documents see para 420 post.

6 Building Act 1984 s 110(b).

7 Ibid s 110. As to the making of building regulations to modify or repeal the provisions of s 110 on the ground of inconsistency with other provisions see s 1(3), Sch 1 para 11(1); and para 307 ante.

8 Ibid s 110.

UPDATE

406-427 Administrative Matters Under the Building Act 1984

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/5. ADMINISTRATIVE MATTERS UNDER THE BUILDING ACT 1984/(3) PROTECTION FROM LIABILITY/415. Protection of members of authorities etc.

(3) PROTECTION FROM LIABILITY

415. Protection of members of authorities etc.

Nothing done, and no contract entered into by a local authority¹, port health authority² or joint board³, and nothing done by a member or officer⁴ of, or person acting under the direction of, such an authority or board, subjects it or him personally to any action, liability, claim or demand whatsoever, if it is done or entered into bona fide for the purpose of executing the Building Act 1984⁵. Any expense incurred by such an authority, board, member, officer or other person acting bona fide for the such purposes must be borne and repaid out of the fund or rate applicable by the authority or board for the general purposes of the Act⁶.

1 For the meaning of 'local authority' see para 301 note 12 ante.

2 As to port health districts and authorities see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 102.

3 'Joint board' has the meaning given by the Public Health Act 1936 s 343(1) (as amended) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 101); Building Act 1984 s 126.

4 For the meaning of 'officer' see para 384 note 9 ante. As to references to an officer in relation to the Inner Temple and the Middle Temple see para 406 note 1 ante.

5 Building Act 1984 s 115(1). As to the making of building regulations to modify or repeal the provisions of s 115 on the ground of inconsistency with other provisions see s 1(3), Sch 1 para 11(1); and para 307 ante.

Section 115(1), (2) does not exempt a member of such an authority or board from liability to make a payment in pursuance of the Audit Commission Act 1998 s 17 (as amended) or s 18 (repealed) (unlawful expenditure) (see LOCAL GOVERNMENT vol 69 (2009) PARA 772); Building Act 1984 s 115(3) (amended by the Audit Commission Act 1998 s 54(1), Sch 3 para 9).

6 Building Act 1984 s 115(2). See note 5 supra.

UPDATE

406-427 Administrative Matters Under the Building Act 1984

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

415-416 Protection of members of authorities etc, Default powers

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/5. ADMINISTRATIVE MATTERS UNDER THE BUILDING ACT 1984/(4) DEFAULT POWERS/416. Default powers.

(4) DEFAULT POWERS

416. Default powers.

If the Secretary of State¹ is satisfied that a local authority² or joint board³ has failed to discharge its functions⁴ under the Building Act 1984 in a case in which it ought to have discharged them, he may make an order declaring it to be in default and directing it for the purposes of removing the default to discharge such of its functions, in such manner and within such time or times, as may be specified in the order⁵. If a local authority or joint board with respect to whom such an order has been made fails to comply with a requirement of the order within the time limited by the order for compliance with that requirement, the Secretary of State, in lieu of enforcing a mandatory order⁶ or otherwise, may make an order transferring to himself such of the functions of the body in default as may be specified in his order⁷.

Where the Secretary of State has transferred functions to himself by order, any expenses incurred by him in discharging those functions must be paid in the first instance out of moneys provided by Parliament, but the amount of those expenses as certified by the Secretary of State must be paid to him by the body in default on demand, and is recoverable by him from it as a debt due to the Crown, and that body has the like power of raising the money required as it has of raising money for defraying expenses incurred directly by it⁸. The payment of such expenses is, to such extent as may be sanctioned by the Secretary of State, a purpose for which a local authority or joint board may borrow money in accordance with the statutory provisions relating to borrowing by such an authority or board⁹.

Where the Secretary of State has made an order transferring to himself such of the functions of the body in default as may be specified in his order¹⁰, he may at any time by a subsequent order vary or revoke that order, but without prejudice to the validity of anything previously done¹¹. Where an order is revoked, the Secretary of State may, either by the revoking order or by a subsequent order, make such provision as appears to him to be desirable with respect to the transfer, vesting and discharge of any property or liabilities acquired or incurred by him in discharging functions to which the revoked order related¹².

1 As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

2 For the meaning of 'local authority' see para 301 note 12 ante.

3 'Joint board' has the meaning given by the Public Health Act 1936 s 343(1) (as amended) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 101): Building Act 1984 s 126.

4 As to the meaning of 'functions' see para 303 note 19 ante.

5 Building Act 1984 s 116(1). As to the making of building regulations to modify or repeal the provisions of ss 116, 117, 118 on the ground of inconsistency with other provisions see s 1(3), Sch 1 para 11(1); and para 307 ante.

6 As to mandatory orders see JUDICIAL REVIEW vol 61 (2010) PARA 703 et seq.

7 Building Act 1984 s 116(2).

8 Ibid s 117(1).

9 Ibid s 117(2).

10 Ie an order under ibid s 116(2): see the text and notes 6-7 supra.

11 Ibid s 118(1).

12 Ibid s 118(2).

UPDATE

406-427 Administrative Matters Under the Building Act 1984

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

415-416 Protection of members of authorities etc, Default powers

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/5. ADMINISTRATIVE MATTERS UNDER THE BUILDING ACT 1984/(5) LOCAL INQUIRIES/417. Local inquiries.

(5) LOCAL INQUIRIES

417. Local inquiries.

The Secretary of State¹ may cause a local inquiry to be held in a case where he is authorised by a provision of the Building Act 1984 to determine a difference, to make an order, to give a consent or approval or otherwise to act under such a provision².

1 As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

2 Building Act 1984 s 119. As to the making of building regulations to modify or repeal the provisions of s 119 on the ground of inconsistency with other provisions see s 1(3), Sch 1 para 11(1); and para 307 ante.

UPDATE

406-427 Administrative Matters Under the Building Act 1984

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/5. ADMINISTRATIVE MATTERS UNDER THE BUILDING ACT 1984/(6) DOCUMENTATION/418. Form of documents.

(6) DOCUMENTATION

418. Form of documents.

All notices, orders, consents, demands and other documents authorised or required by or under the Building Act 1984 to be given, made or issued by a local authority¹, and notices and applications authorised or required by or under that Act to be given or made to, or to any officer² of, a local authority, must be in writing³.

The Secretary of State⁴ may, by regulations made by statutory instrument, prescribe the form of any notice, advertisement, certificate or other document to be used for any of the purposes of the Act, and if forms are prescribed those forms or forms to the like effect may be used in all cases to which those forms are applicable⁵.

1 For the meaning of 'local authority' see para 301 note 12 ante.

2 As to the meaning of 'officer' see para 384 note 9 ante. As to references to a authorised officer in relation to the Inner Temple and the Middle Temple see para 406 note 1 ante. For the meaning of 'authorised officer' see para 384 note 10 ante.

3 Building Act 1984 s 92(1). As to the making of building regulations to modify or repeal the provisions of s 92 on the ground of inconsistency with other provisions, see s 1(3), Sch 1 para 11(1); and para 307 ante.

4 As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

5 Building Act 1984 s 92(2). At the date at which this volume states the law, no such forms had been prescribed.

UPDATE

406-427 Administrative Matters Under the Building Act 1984

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/5. ADMINISTRATIVE MATTERS UNDER THE BUILDING ACT 1984/(6) DOCUMENTATION/419. Authentication of documents.

419. Authentication of documents.

A notice, order, consent, demand or other document that a local authority¹ is authorised or required by or under the Building Act 1984 to give, make or issue may be signed on behalf of the authority:

332 (1) by the proper officer² of the authority³, as respects documents relating to matters within his province⁴; or

333 (2) by an officer⁵ of the authority authorised by it in writing to sign documents of the particular kind or, as the case may be, the particular document⁶.

A document purporting to bear the signature⁷ of an officer expressed to hold an office by virtue of which he is empowered to sign such a document⁸, or expressed to be authorised by the local authority to sign such a document or the particular document⁹,

is deemed, for the purposes of the Building Act 1984 and of any building regulations¹⁰ and orders made under it, to have been duly given, made or issued by authority of the local authority, until the contrary is proved¹¹.

1 For the meaning of 'local authority' see para 301 note 12 ante.

2 For the meaning of 'proper officer' see para 384 note 9 ante. As to references to a proper officer in relation to the Inner Temple and the Middle Temple see para 406 note 1 ante.

3 The Building Act 1984 s 93 also refers to the district surveyor. The office of district surveyor no longer exists and his functions have been transferred to the inner London borough councils and the Common Council of the City of London: see para 302 note 13 ante.

4 Ibid s 93(1)(a). As to the making of building regulations to modify or repeal the provisions of s 93, on the ground of inconsistency with other provisions see s 1(3), Sch 1 para 11(1); and para 307 ante.

5 As to the meaning of 'officer' see para 384 note 9 ante. As to references to an officer in relation to the Inner Temple and the Middle Temple see para 406 note 1 ante.

6 Building Act 1984 s 93(1)(b).

7 'Signature' includes a facsimile of a signature by whatever process reproduced: ibid s 93(3).

8 Ibid s 93(2)(a).

9 Ibid s 93(2)(b).

10 For the meaning of 'building regulations' see para 306 ante.

11 Building Act 1984 s 93(2).

UPDATE

406-427 Administrative Matters Under the Building Act 1984

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/5. ADMINISTRATIVE MATTERS UNDER THE BUILDING ACT 1984/(6) DOCUMENTATION/420. Service of documents.

420. Service of documents.

A notice, order, consent, demand or other document that is authorised or required by or under the Building Act 1984 to be given to or served on a person may, in any case for which no other provision is made by the Act, be given or served either:

- 334 (1) by delivering it to that person¹;
- 335 (2) in the case of an officer² of a local authority³, by leaving it, or sending it in a prepaid letter addressed to him, at his office⁴;
- 336 (3) in the case of any other person, by leaving it, or sending it in a prepaid letter addressed to him, at his usual or last known residence⁵;
- 337 (4) in the case of an incorporated company or body, by delivering it to its secretary or clerk at its registered or principal office, or by sending it in a prepaid letter addressed to him at that office⁶;
- 338 (5) in the case of a document to be given to or served on a person as being the owner⁷ of any premises⁸ by virtue of the fact that he receives the rackrent⁹ of it as agent for another, or would so receive it if the premises were let at a rackrent, by leaving it, or sending it in a prepaid letter addressed to him, at his place of business¹⁰;
- 339 (6) in the case of a document to be given to or served on the owner or the occupier of any premises, if it is not practicable after reasonable inquiry to ascertain the name and address of the person to or on whom it should be given or served, or if the premises are unoccupied, by addressing it to the person concerned by the description of 'owner' or 'occupier' of the premises (naming them) to which it relates, and delivering it to some person on the premises, or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises¹¹.

1 Building Act 1984 s 94(a). As to the making of building regulations to modify or repeal the provisions of s 94 on the ground of inconsistency with other provisions, see s 1(3), Sch 1 para 11(1); and para 307 ante.

2 As to the meaning of 'officer' see para 384 note 9 ante. As to references to an officer in relation to the Inner Temple and the Middle Temple see para 406 note 1 ante.

3 For the meaning of 'local authority' see para 301 note 12 ante.

4 Building Act 1984 s 94(b).

5 Ibid s 94(c).

6 Ibid s 94(d).

7 For the meaning of 'owner' see para 310 note 2 ante.

8 As to the meaning of 'premises' see para 310 note 2 ante.

9 For the meaning of 'rackrent' see para 310 note 2 ante.

10 Building Act 1984 s 94(e).

11 Ibid s 94(f).

UPDATE

406-427 Administrative Matters Under the Building Act 1984

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

420 Service of documents

TEXT AND NOTES--As to the electronic service of documents see the Building Act 1984 s 94A (added by SI 2008/2334), the Building Regulations 2000, SI 2000/2531, reg 22B (added by SI 2009/2334, and amended by SI 2009/1219) and the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532, reg 31A (added by SI 2008/2334, and amended by SI 2009/1219).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/5. ADMINISTRATIVE MATTERS UNDER THE BUILDING ACT 1984/ (7) GENERAL PROVISIONS RELATING TO APPEALS UNDER THE BUILDING ACT 1984/421. Appeal against notice requiring works.

(7) GENERAL PROVISIONS RELATING TO APPEALS UNDER THE

421. Appeal against notice requiring works.

Where a person is given certain notices under the Building Act 1984¹, he may appeal to a magistrates' court on any of the following grounds that are appropriate in the circumstances of the particular case²:

- 340 (1) that the notice or requirement is not justified by the terms of the provision under which it purports to have been given³;
- 341 (2) that there has been some informality, defect or error in, or in connection with, the notice⁴;
- 342 (3) that the authority has refused unreasonably to approve the execution of alternative works, or that the works required by the notice to be executed are otherwise unreasonable in character or extent, or are unnecessary⁵;
- 343 (4) that the time within which the works are to be executed is not reasonably sufficient for the purpose⁶;
- 344 (5) that the notice might lawfully have been served on the occupier of the premises⁷ in question instead of on the owner⁸, or on the owner instead of on the occupier, and that it would have been equitable for it to have been so served⁹;
- 345 (6) where the works are works for the common benefit of the premises in question and other premises, that some other person, being the owner or occupier of premises to be benefited, ought to contribute towards the expenses of executing any works required¹⁰.

The appellant must, where the grounds upon which the appeal is brought include a ground specified in head (5) or head (6) above, serve a copy of his notice of appeal on each other person referred to¹¹. The appellant may, in the case of any appeal, serve a copy of his notice of appeal on any other person having an estate or interest in the premises in question, and on the hearing of the appeal the court may make such order as it thinks fit with respect to¹²: (a) the person by whom any works are to be executed and the contribution to be made by any other person towards the cost of the works¹³; or (b) the proportions in which any expenses that may become recoverable by the local authority¹⁴ are to be borne by the appellant and such other person¹⁵. In exercising such powers, the court must have regard (i) as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of the tenancy and to the nature of the works required¹⁶; and (ii) in any case, to the degree of benefit to be derived by the different persons concerned¹⁷.

1 I.e a notice in relation to which it is declared by any provision of the Building Act 1984 that s 102 applies: see s 102(1). Section 102 is expressly applied by s 2(5) (see para 310 ante), s 59(2) (see para 382 ante), s 60(5) (see para 383 ante), s 64(3) (see para 387 ante), s 65(3) (see para 388 ante), s 66(5) (see para 389 ante), s 68(5) (see para 391 ante), s 70(2) (see para 392 ante), s 71(2) (see para 393 ante), s 72(2) (see para 394 ante), s 74(4) (see para 396 ante), s 79(3) (see para 399 ante), s 83(1) (see para 401 ante), s 84(2) (see para 402 ante).

2 Ibid s 102(1). Section 102 has effect subject to any modification specified in the provision under which the notice is given: s 102(5). As to the meaning of 'modifications' see para 303 note 22 ante. As to the making of building regulations to modify or repeal the provisions of s 102 on the ground of inconsistency with other provisions see s 1(3), Sch 1 para 11(1); and para 307 ante. As to appeals generally see para 422 et seq post.

3 Ibid s 102(1)(a).

4 Ibid s 102(1)(b). If and in so far as an appeal under s 102 is based on the ground of some informality, defect or error in or in connection with the notice, the court must dismiss the appeal, if it is satisfied that the informality, defect or error was not a material one: s 102(2).

5 Ibid s 102(1)(c).

6 Ibid s 102(1)(d).

7 As to the meaning of 'premises' see para 310 note 2 ante.

8 For the meaning of 'owner' see para 310 note 2 ante.

9 Building Act 1984 s 102(1)(e).

10 Ibid s 102(1)(f).

11 Ibid s 102(3)(a).

12 Ibid s 102(3)(b).

13 Ibid s 102(3)(b)(i).

14 For the meaning of 'local authority' see para 301 note 12 ante. As to the recovery of expenses generally see paras 413-414 ante.

15 Building Act 1984 s 102(3)(b)(ii).

16 Ibid s 102(4)(a).

17 Ibid s 102(4)(b).

UPDATE

406-427 Administrative Matters Under the Building Act 1984

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/5. ADMINISTRATIVE MATTERS UNDER THE BUILDING ACT 1984/ (7) GENERAL PROVISIONS RELATING TO APPEALS UNDER THE BUILDING ACT 1984/422. Procedure on appeal or application to magistrates' court.

422. Procedure on appeal or application to magistrates' court.

Where the Building Act 1984 provides for an appeal to a magistrates' court¹ against a requirement, refusal or other decision of a local authority², or for a matter to be determined by, or for an application in respect of a matter to be made to, a magistrates' court, the procedure must be by way of complaint for an order³. The time within which such an appeal may be brought is 21 days from the date on which notice of the local authority's requirement, refusal or other decision was served⁴ upon the person desiring to appeal, and for these purposes the making of the complaint is deemed to be the bringing of the appeal⁵. In a case where such an appeal lies, the document notifying to the person concerned the local authority's decision in the matter must state the right of appeal to a magistrates' court and the time within which such an appeal may be brought⁶.

1 As to appeals to magistrates' courts generally see MAGISTRATES.

2 For the meaning of 'local authority' see para 301 note 12 ante.

3 Building Act 1984 s 103(1). As to the making of building regulations to modify or repeal the provisions of s 103 on the ground of inconsistency with other provisions see s 1(3), Sch 1 para 11(1); and para 307 ante.

4 As to the service of documents see para 420 ante.

5 Building Act 1984 s 103(2).

6 Ibid s 103(3).

UPDATE

406-427 Administrative Matters Under the Building Act 1984

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/5. ADMINISTRATIVE MATTERS UNDER THE BUILDING ACT 1984/ (7) GENERAL PROVISIONS RELATING TO APPEALS UNDER THE BUILDING ACT 1984/423. Local authority to give effect to appeal.

423. Local authority to give effect to appeal.

Where upon an appeal under the Building Act 1984 a court varies or reverses a decision of a local authority¹, it is the duty of the local authority to give effect to the order of the court and, in particular, to grant or issue any necessary consent, certificate or other document, and to make any necessary entry in any register².

1 For the meaning of 'local authority' see para 301 note 12 ante.

2 Building Act 1984 s 104. As to the making of building regulations to modify or repeal the provisions of s 104 on the ground of inconsistency with other provisions see s 1(3), Sch 1 para 11(1); and para 307 ante.

UPDATE

406-427 Administrative Matters Under the Building Act 1984

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/5. ADMINISTRATIVE MATTERS UNDER THE BUILDING ACT 1984/ (7) GENERAL PROVISIONS RELATING TO APPEALS UNDER THE BUILDING ACT 1984/424. Judge not disqualified by liability to rates.

424. Judge not disqualified by liability to rates.

A judge of a court or a justice of the peace¹ is not disqualified from acting in cases arising under the Building Act 1984 by reason only of his being, as one of several ratepayers, or as one of any other class of persons, liable in common with the others to contribute to, or be benefited by, a rate or fund out of which expenses of a local authority² are to be defrayed³.

1 As to justices of the peace see MAGISTRATES.

2 For the meaning of 'local authority' see para 301 note 12 ante.

3 Building Act 1984 s 105. As to the making of building regulations to modify or repeal the provisions of s 105 on the ground of inconsistency with other provisions see s 1(3), Sch 1 para 11(1); and para 307 ante.

UPDATE

406-427 Administrative Matters Under the Building Act 1984

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/5. ADMINISTRATIVE MATTERS UNDER THE BUILDING ACT 1984/(8) OFFENCES/425. Obstruction.

(8) OFFENCES

425. Obstruction.

A person who wilfully obstructs a person acting in the execution of the Building Act 1984, or of building regulations¹, or of an order or warrant made or issued under the Act, is, in a case for which no other provision is made by the Act, liable on summary conviction to a fine².

¹ For the meaning of 'building regulations' see para 306 ante.

² Building Act 1984 s 112. The fine imposed must not exceed level 1 on the standard scale: see s 112. As to the standard scale see para 313 note 7 ante. As to the making of building regulations to modify or repeal the provisions of s 112 on the ground of inconsistency with other provisions see s 1(3), Sch 1 para 11(1); and para 307 ante.

UPDATE

406-427 Administrative Matters Under the Building Act 1984

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/5. ADMINISTRATIVE MATTERS UNDER THE BUILDING ACT 1984/(8) OFFENCES/426. Prosecution of offences.

426. Prosecution of offences.

Proceedings in respect of an offence created by or under the Building Act 1984 must not, without the written consent of the Attorney General¹, be taken by any person other than a party aggrieved, or a local authority² or a body whose function³ it is to enforce the provision in question⁴.

1 As to the Attorney General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 529 et seq.

2 For the meaning of 'local authority' see para 301 note 12 ante.

3 As to the meaning of 'functions' see para 303 note 19 ante.

4 Building Act 1984 s 113. As to the making of building regulations to modify or repeal the provisions of s 113 on the ground of inconsistency with other provisions see s 1(3), Sch 1 para 11(1); and para 307 ante.

UPDATE

406-427 Administrative Matters Under the Building Act 1984

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/5. ADMINISTRATIVE MATTERS UNDER THE BUILDING ACT 1984/(8) OFFENCES/427. Continuing offences.

427. Continuing offences.

Where provision is made by or under the Building Act 1984 for the imposition of a daily penalty in respect of a continuing offence the court by which a person is convicted of the original offence may fix a reasonable period from the date of conviction for the defendant to comply with any directions given by the court¹. Where the court has fixed such a period, the daily penalty is not recoverable in respect of any day before the period expires².

¹ Building Act 1984 s 114.

² Ibid s 114. As to the making of building regulations to modify or repeal the provisions of s 114 on the ground of inconsistency with other provisions see s 1(3), Sch 1 para 11(1); and para 307 ante.

UPDATE

406-427 Administrative Matters Under the Building Act 1984

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/6. SAFETY AT SPORTS GROUNDS ETC/(1) SAFETY OF SPORTS GROUNDS/428. Power to make regulations for securing safety at sports grounds.

6. SAFETY AT SPORTS GROUNDS ETC

(1) SAFETY OF SPORTS GROUNDS

428. Power to make regulations for securing safety at sports grounds.

The Secretary of State¹ may by regulations² make provision for securing safety³ at sports grounds⁴. Such regulations may provide for the keeping of records of attendance of spectators at sports grounds, and records relating to the maintenance of safety at sports grounds⁵.

The Secretary of State may also by regulations⁶:

- 346 (1) prescribe the procedure for the issue, amendment, replacement, transfer and cancellation of safety certificates⁷ and the particulars to be given in applications for their issue, amendment, replacement or transfer⁸;
- 347 (2) authorise local authorities to determine, subject to such limits or in accordance with such provisions as may be prescribed by the regulations, the fees, if any, to be charged in respect of such applications⁹; and
- 348 (3) prescribe the time within which appeals¹⁰ are to be brought¹¹.

Any regulations made under these powers may contain such incidental and supplementary provisions as the Secretary of State thinks expedient¹².

1 As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

2 Any power to make an order or regulations conferred on the Secretary of State by any provision of the Safety of Sports Grounds Act 1975 is exercisable by statutory instrument: s 18(1). Regulations under any provision of the Safety of Sports Grounds Act 1975 may make different provision for different classes of sports ground: s 18(1A) (added by the Fire Safety and Safety of Places of Sport Act 1987 s 19(2)(d)). Any power to make an order conferred by any provision of the Safety of Sports Grounds Act 1975 must include power to make an order varying or revoking any order previously made under that provision: Safety of Sports Grounds Act 1975 s 18(2). Orders and regulations under the Act (except an order under s 19(6)), are subject to annulment in pursuance of a resolution of either House of Parliament: s 18(3). It is the duty of the Secretary of State, before making an order or regulations under any of the provisions of that Act, to consult with such persons or bodies of persons as appear to him requisite: s 18(4).

3 'Safety' does not include safety from danger inherent in participation in a sporting or competitive activity: *ibid* s 17(1).

4 *Ibid* s 6(2). At the date at which this volume states the law no such regulations had been made. As to offences against regulations under s 6(2) see s 12(5); and para 438 post.

'Sports ground' means any place where sports or other competitive activities take place in the open air and where accommodation has been provided for spectators, consisting of artificial structures or of natural structures artificially modified for the purpose: s 17(1). 'Spectator' means any person occupying accommodation provided for spectators at a sports ground: s 17(1).

Section 6(2) binds the Crown, but has effect, in relation to premises occupied by the Crown, with the substitution of a reference to the Secretary of State for any reference to the local authority: s 16(1). Nothing in the Safety of Sports Grounds Act 1975 is to be taken to authorise the entry of premises occupied by the Crown: s 16(2). 'Local authority' means: (1) in Greater London, the London borough council or the Common Council of the City of London; (2) in England, in the metropolitan counties, the district council; (3) in England outside

Greater London and the metropolitan counties, the county council; and (4) in Wales, the county council or county borough council: s 17(1) (substituted by the Local Government Act 1985 s 16, Sch 8 para 7(2); and amended by the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 47(2)(b), Sch 18). As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) para 51 et seq. For the meaning of 'England' see para 370 note 1 ante. For the meaning of 'Wales' see para 370 note 1 ante. As to areas and authorities in England see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq; and as to areas and authorities in Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 37 et seq.

5 Safety of Sports Grounds Act 1975 s 6(3).

6 Ibid s 6(1). In exercise of the power under s 6(1), (4) (see the text and note 12 infra), the Safety of Sports Grounds Regulations 1987, SI 1987/1941, have been made: see para 430 et seq post.

7 For the meaning of 'safety certificate' see para 429 note 4 post.

8 Safety of Sports Grounds Act 1975 s 6(1)(a).

9 Ibid s 6(1)(b).

10 ie appeals under ibid s 5 (as amended): see para 432 post.

11 Ibid s 6(1)(c) (substituted by the Fire Safety and Safety of Places of Sport Act 1987 s 22(7)).

12 Safety of Sports Grounds Act 1975 s 6(4). See note 6 supra.

UPDATE

428-450 Safety at Sports Grounds etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/6. SAFETY AT SPORTS GROUNDS ETC/(1) SAFETY OF SPORTS GROUNDS/429. Safety certificates.

429. Safety certificates.

The Secretary of State¹ may by designation order² designate as a sports ground³ requiring a safety certificate⁴ any sports ground which in his opinion has accommodation⁵ for more than 10,000⁶ spectators⁷. A sports ground in respect of which a designation order is in operation is known as a 'designated sports ground'⁸. A safety certificate may be either:

- 349 (1) a 'general safety certificate', which is a certificate issued by the local authority⁹ for the area in which a sports ground is situated in respect of the use of the sports ground for an activity or a number of activities specified in the certificate during an indefinite period commencing with the date so specified¹⁰; or
- 350 (2) a 'special safety certificate', which is a certificate issued by that authority in respect of the use of the sports ground for an activity or a number of activities specified in the certificate on a specified occasion or series of specified occasions¹¹.

A safety certificate contains such terms and conditions¹² as the local authority considers necessary or expedient to secure reasonable safety at the sports ground when it is in use for the specified activity or activities, and the terms and conditions may be such as to involve alterations or additions to the sports ground¹³. No condition of a safety certificate may require the provision of the services at the ground of any members of a police force unless the extent of the provision of their services is reserved for the determination of the chief officer of police of the force¹⁴. A certificate may include a condition that records be kept of the attendance of spectators at the sports ground, and relating to the maintenance of safety¹⁵ there¹⁶. Contravention of the terms and conditions of the safety certificate is an offence¹⁷.

Admitting spectators to a designated sports ground in respect of which no safety certificate is in force is an offence¹⁸.

1 As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

2 Safety of Sports Grounds Act 1975 ss 1(4), 17(1).

3 For the meaning of 'sports ground' see para 428 note 4 ante.

4 Safety of Sports Grounds Act 1975 ss 1(1), 17(1). With reference to a stand at a sports ground the term 'safety certificate', where it refers to a stand, means a safety certificate (whether general or special) under the Fire Safety and Safety of Places of Sport Act 1987 Pt III (ss 26-41) (as amended) (see para 440 et seq post): Safety of Sports Grounds Act 1975 s 17(1) (amended by the Fire Safety and Safety of Places of Sport Act 1987 s 23(3)).

5 The Secretary of State may: (1) estimate, by any means which he considers appropriate, for how many spectators a sports ground has accommodation; and (2) require any person concerned with the organisation or management of a sports ground to furnish him within such reasonable time as he may specify with such information as he considers necessary for the purpose of making such an estimate: Safety of Sports Grounds Act 1975 s 1(2) (amended by the Fire Safety and Safety of Places of Sport Act 1987 s 19(1), Sch 2). Failure to comply with such a requirement may be an offence: see the Safety of Sports Grounds Act 1975 s 12(6)(a), (b); and para 438 post.

6 The Secretary of State may by order substitute for this number such other number as he considers appropriate, but no such order affects the validity of any designation previously made: *ibid* s 1(1A) (s 1(1A), (1B) added by the Fire Safety and Safety of Places of Sport Act 1987 s 20). Such an order may make different

substitutions for different classes of sports ground: Safety of Sports Grounds Act 1975 s 1(1B) (as so added). In relation to sports grounds in England and Wales at which association football matches are played and which are occupied by a club which is a member of the Football League Limited or the Football Association Premier League Limited, the number 5,000 is substituted for the number specified in the Safety of Sports Grounds Act 1975 s 1(1): Safety of Sports Grounds (Accommodation of Spectators) Order 1996, SI 1996/499, arts 2, 3.

7 Safety of Sports Grounds Act 1975 s 1(1) (amended by the Fire Safety and Safety of Places of Sport Act 1987 Sch 2). The following designation orders have been made under the Safety of Sports Grounds Act 1975 s 1(1) (as amended) or have effect as if so made by virtue of the Fire Safety and Safety of Places of Sport Act 1987 s 49(2), Sch 5 para 5: see the Safety of Sports Grounds (Designation) Order 1976, SI 1976/1264 (amended by SI 1998/1845); the Safety of Sports Grounds (Designation) Order 1977, SI 1977/1323; the Safety of Sports Grounds (Designation) Order 1978, SI 1978/1091 (amended by SI 1997/1676); the Safety of Sports Grounds (Designation) Order 1979, SI 1979/1022 (amended by SI 1993/2090); the Safety of Sports Grounds (Designation) Order 1980, SI 1980/1021; the Safety of Sports Grounds (Designation) Order 1981, SI 1981/949; the Safety of Sports Grounds (Designation) Order 1982, SI 1982/1052; the Safety of Sports Grounds (Designation) Order 1983, SI 1983/962 (amended by SI 1994/2239); the Safety of Sports Grounds (Designation) Order 1984, SI 1984/942; the Safety of Sports Grounds (Association Football Grounds) (Designation) Order 1985, SI 1985/1063 (amended by SI 1988/1975; SI 1993/2090; SI 1996/2648; and SI 1999/1930); the Safety of Sports Grounds (Rugby Football Grounds) (Designation) Order 1985, SI 1985/1064 (amended by SI 1992/607; SI 1995/1990; and SI 2000/1809); the Safety of Sports Grounds (Designation) Order 1986, SI 1986/1296 (amended by SI 1992/607; SI 1994/2239; SI 1995/1990; SI 1999/1930; SI 2000/1809; and SI 2001/2372); the Safety of Sports Grounds (Designation) Order 1987, SI 1987/1689; the Safety of Sports Grounds (Designation) Order 1988, SI 1988/1975; the Safety of Sports Grounds (Designation) Order 1992, SI 1992/607; the Safety of Sports Grounds (Designation) Order 1993, SI 1993/2090; the Safety of Sports Grounds (Designation) Order 1994, SI 1994/2239; the Safety of Sports Grounds (Designation) Order 1995, SI 1995/1990; the Safety of Sports Grounds (Designation) Order 1996, SI 1996/2648; the Safety of Sports Grounds (Designation) Order 1997, SI 1997/1676; the Safety of Sports Grounds (Designation) Order 1998, SI 1998/1845; the Safety of Sports Grounds (Designation) Order 1999, SI 1999/1930; the Safety of Sports Grounds (Designation) Order 2000, SI 2000/1809; the Safety of Sports Grounds (Designation) Order 2001, SI 2001/2372; and the Safety of Sports Grounds (Designation) Order 2002, SI 2002/1754. As to the making of orders generally see para 428 note 2 ante.

The Secretary of State has no power to modify the provisions of the Safety of Sports Grounds Act 1975 s 1(1): see s 15A(1) (added by the Fire Safety and Safety of Places of Sport Act 1987 s 19(2)(c)).

For the meaning of 'spectator' see para 428 note 4 ante.

8 Safety of Sports Grounds Act 1975 ss 1(4), 17(1) (definition amended by the Fire Safety and Safety of Places of Sport Act 1987 Sch 2).

The Secretary of State may, as respects any specified class of sports ground, by order modify the provisions of the Safety of Sports Grounds Act 1975 (except s 1(1)) in their application to sports grounds of that class: s 15A(1) (s 15A added by the Fire Safety and Safety of Places of Sport Act 1987 s 19(2)(c)). Such an order may make different modifications in relation to different activities at the same class of ground, and include such supplementary and transitional provision as the Secretary of State thinks expedient: Safety of Sports Grounds Act 1975 s 15A(2) (as so added). At the date at which this volume states the law no such order had been made.

9 For the meaning of 'local authority' see para 428 note 4 ante. The provisions of *ibid* ss 1, 2 (both as amended) bind the Crown, but have effect, in relation to premises occupied by the Crown, with the substitution of a reference to the Secretary of State for any reference to the local authority: s 16(1). Nothing in the Safety of Sports Grounds Act 1975 is to be taken to authorise the entry of premises occupied by the Crown: s 16(2).

10 *Ibid* ss 1(3)(a), (4), 17(1) (s 1(3)(a) amended by the Fire Safety and Safety of Places of Sport Act 1987 Sch 2).

11 Safety of Sports Grounds Act 1975 s 1(3)(b), (4), 17(1) (s 1(3)(b) amended by the Fire Safety and Safety of Places of Sport Act 1987 Sch 2).

12 The certificate may include different terms and conditions in relation to different activities: Safety of Sports Grounds Act 1975 s 2(5). A general safety certificate must contain or have attached to it a plan of the sports ground, and the terms and conditions in the certificate, or in any special safety certificate issued for the sports ground, must be framed, where appropriate, by reference to that plan: s 2(4).

13 *Ibid* s 2(1) (amended by the Fire Safety and Safety of Places of Sport Act 1987 Sch 2). Nothing in the safety certificate may derogate from any requirements imposed by regulations under the Safety of Sports Grounds Act 1975 s 6(2) (see para 428 note 4 *supra*): s 2(6). In so far as an order under s 15A (as added) (see note 8 *supra*) requires as respects any class of sports ground, a safety certificate must include such terms and conditions as may be provided for in the order: s 2(2) (substituted by the Fire Safety and Safety of Places of Sport Act 1987 s 19(2)(a)).

14 Ibid s 2(2A) (added by the Fire Safety and Safety of Places of Sport Act 1987 s 21). As to the chief officer of police see POLICE vol 36(1) (2007 Reissue) para 178 et seq.

15 As to the meaning of 'safety' see para 428 note 3 ante.

16 Safety of Sports Grounds Act 1975 s 2(3) (amended by the Fire Safety and Safety of Places of Sport Act 1987 Sch 2).

17 See the Safety of Sports Grounds Act 1975 s 12(1)(d); and para 438 post.

18 See ibid s 12(1)(a), (c) (as amended); and para 438 post.

UPDATE

428-450 Safety at Sports Grounds etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

429 Safety certificates

NOTE 7--SI 1986/1296 further amended: SI 2006/218. SI 1985/1064 further amended: SI 2008/55. See also the Safety of Sports Grounds (Designation) (No 2) Order 2002, SI 2002/2893; the Safety of Sports Grounds (Designation) Order 2003, SI 2003/1256; the Safety of Sports Grounds (Designation) (No 2) Order 2003, SI 2003/1637; the Safety of Sports Grounds (Designation) Order 2004, SI 2004/1907; the Safety of Sports Grounds (Designation) Order 2005, SI 2005/1748; the Safety of Sports Grounds (Designation) (No 3) Order 2006, SI 2006/1971; the Safety of Sports Grounds (Designation) Order 2007, SI 2007/1587; the Safety of Sports Grounds (Designation) Order 2008, SI 2008/55; the Safety of Sports Grounds (Designation) (No 2) Order 2008, SI 2008/1644; the Safety of Sports Grounds (Designation) Order 2009, SI 2009/373; the Safety of Sports Grounds (Designation) (No 2) Order 2009, SI 2009/1394; and the Safety of Sports Grounds (Designation) (No 3) Order 2009, SI 2009/1501.

TEXT AND NOTES 12-17--No condition of a safety certificate must require a person to contravene any provision of the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, or regulations made under it: 1975 Act s 2(2A) (added by SI 2005/1541).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/6. SAFETY AT SPORTS GROUNDS ETC/(1) SAFETY OF SPORTS GROUNDS/430. Application for issue of safety certificates.

430. Application for issue of safety certificates.

If a local authority¹ receives an application for a safety certificate² for a designated sports ground³ in its area, it is its duty to determine whether the applicant is a qualified person, that is a person likely to be in a position to prevent contravention of the terms and conditions of a certificate⁴. If the authority determines that the applicant is not a qualified person, it must serve⁵ on him written notice of its determination⁶. If a local authority determines that an applicant is a qualified person, where no general safety certificate⁷ for the sports ground is in operation, it must issue such a certificate for it to him⁸, and where a general safety certificate for the sports ground is in operation, it may issue a special safety certificate⁹ for it to him¹⁰.

The local authority must send a copy of an application for a safety certificate for a sports ground to the chief officer of police¹¹ and, where the local authority is in Wales¹², Greater London¹³ or a metropolitan county, the fire authority or, in any other case, the building authority¹⁴ for the area in which it is situated, and must consult them about the terms and conditions to be included in the certificate¹⁵. The authority may by notice in writing require an applicant for a safety certificate to furnish it within such reasonable time as it may specify in the notice with such information and such plans as it considers necessary to enable it to determine the terms and conditions which ought to be included in any certificate issued in response to his application¹⁶.

As soon as practicable after a local authority has decided to issue a safety certificate, it must serve on every interested party¹⁷ notice in writing of its decision¹⁸. The notice must state that a copy of the safety certificate and a copy of any application in respect of which the local authority's decision was taken is available for inspection at a place and at the times specified in the notice¹⁹. As soon as may be after this decision, the local authority must cause to be published in a newspaper circulating in the locality of the sports ground to which the safety certificate relates a notice setting out that decision and stating that a copy of the safety certificate and a copy of any application in respect of which the local authority's decision was taken is available for inspection at a place and at the times specified in the notice²⁰.

Where on an application for a special safety certificate a local authority has determined to refuse that application on grounds other than that it has determined that the person is not a qualified person²¹, it must as soon as practicable after that refusal serve on the applicant notice in writing of its decision, together with its reasons for it²².

1 For the meaning of 'local authority', see para 428 note 4 ante. The provisions of the Safety of Sports Grounds Act 1975 s 3 (as amended) bind the Crown, but have effect, in relation to premises occupied by the Crown, with the substitution of a reference to the Secretary of State for any reference to the local authority: s 16(1). Nothing in the Safety of Sports Grounds Act 1975 is to be taken to authorise the entry of premises occupied by the Crown: s 16(2).

2 For the meaning of 'safety certificate' see para 429 ante. The form contained in the Safety of Sports Grounds Regulations 1987, SI 1987/1941, reg 4(1), Schedule, or a form to the like effect, must be used for such an application: reg 4(1). A local authority may determine the fee to be charged in respect of an application for the issue of a safety certificate, but such a fee must not exceed an amount commensurate with the work actually and reasonably done by or on behalf of the local authority in respect of the application: reg 8. The Safety of Sports Grounds Regulations 1987, SI 1987/1941 were made in exercise of the statutory power contained in the Safety of Sports Grounds Act 1975 s 6(1), (4): see para 428 ante.

3 For the meaning of 'sports ground' see para 428 note 4 ante. For the meaning of 'designated sports ground' see para 429 ante.

4 Safety of Sports Grounds Act 1975 ss 3(1), 17(1) (s 3(1) amended by the Fire Safety and Safety of Places of Sport Act 1987 s 19(1), Sch 2). As to the application of the Safety of Sports Grounds Act 1975 s 3 (as amended) to the crown see note 1 supra.

5 Any notice or other document required or authorised by or by virtue of the Safety of Sports Grounds Act 1975 to be served on any person may be served on him by delivering it to him, by leaving it at his proper address or by sending it by post: s 14(1). Any notice or other document so required or authorised to be served on a body corporate or a firm is duly served if it is served on the secretary or clerk of that body or a partner of that firm: s 14(2). For the purposes of s 14, and of the Interpretation Act 1978 s 7, Sch 2 para 3 (references to service by post) (see STATUTES vol 44(1) (Reissue) para 1388) in its application to the Safety of Sports Grounds Act 1975 s 14, the proper address of a person, in the case of a secretary or clerk of a body corporate, is that of the registered or principal office of that body, in the case of a partner of a firm is that of the principal office of the firm, and in any other case is the last known address of the person to be served: s 14(3); Interpretation Act 1978 s 17(2)(a).

6 See the Safety of Sports Grounds Act 1975 s 5(1); and para 432 post. The applicant may appeal against the determination: see para 432 post.

7 For the meaning of 'general safety certificate' see para 429 ante.

8 Safety of Sports Grounds Act 1975 s 3(2)(a) (amended by the Fire Safety and Safety of Places of Sport Act 1987 Sch 2).

9 For the meaning of 'special safety certificate' see para 429 ante.

10 Safety of Sports Grounds Act 1975 s 3(2)(b) (amended by the Fire Safety and Safety of Places of Sport Act 1987 Sch 2).

11 As to the chief officer of police see POLICE vol 36(1) (2007 Reissue) para 178 et seq.

12 For the meaning of 'Wales' see para 370 note 1 ante.

13 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) para 29.

14 For these purposes, 'building authority' means in England outside Greater London and the metropolitan counties, the district council: Safety of Sports Grounds Act 1975 s 17(1) (definition substituted by the Local Government Act 1985 s 16, Sch 8 para 7; and amended by the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 47(2)(a), Sch 18).

15 Safety of Sports Grounds Act 1975 s 3(3) (amended by the Local Government Act 1985 Sch 8 para 7(1); the Fire Safety and Safety of Places of Sport Act 1987 Sch 2; and the Local Government (Wales) Act 1994 Sch 16 para 47(1)(a)).

16 Safety of Sports Grounds Act 1975 s 3(4). If an applicant for a safety certificate fails to comply with a requirement under s 3(4) within the time specified by the local authority, or within such further time as it may allow, he will be deemed to have withdrawn his application: s 3(5). The furnishing of false information may be an offence: see s 12(6)(b); and para 438 post.

17 For these purposes, 'interested party' means: (1) the holder of a safety certificate whose application to have it amended or replaced has been refused; (2) any other person known to the local authority to be or likely to be concerned in ensuring compliance with the terms and conditions of the safety certificate; (3) the chief officer of police; and (4) where the local authority is in Greater London or a metropolitan county, the fire authority or, in any other case, the building authority: Safety of Sports Grounds Regulations 1987, SI 1987/1941, reg 5(6).

18 Ibid reg 5(1)(a).

19 Ibid reg 5(4).

20 Ibid reg 5(6).

21 Ie on grounds other than the one mentioned in the Safety of Sports Grounds Act 1975 s 5(1): see para 432 post.

22 Safety of Sports Grounds Regulations 1987, SI 1987/1941, reg 5(2).

UPDATE

428-450 Safety at Sports Grounds etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

430 Application for issue of safety certificates

TEXT AND NOTES 12-15--For 'where ... area in which it' read 'if the local authority is not the fire and rescue authority, the fire and rescue authority, and if the local authority is not the building authority, the building authority for the area in which the sports ground': 1975 Act s 3(3) (amended by the Fire and Rescue Services Act 2004 Sch 1 para 47).

NOTE 17--Now, head (4) the fire and rescue authority, where the local authority is not the fire and rescue authority, and the building authority, where the local authority is not the building authority: SI 1987/1941 reg 5(6) (amended by SI 2004/3168 (England), SI 2005/2929 (Wales)).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/6. SAFETY AT SPORTS GROUNDS ETC/(1) SAFETY OF SPORTS GROUNDS/431. Amendment, replacement, cancellation and transfer of certificates.

431. Amendment, replacement, cancellation and transfer of certificates.

The local authority¹ may, in any case in which it appears appropriate to it to do so, amend a safety certificate² by notice³ in writing to its holder⁴, or replace a safety certificate⁵. A safety certificate may be amended or replaced either on the application of the holder or without such an application⁶. If the authority receives an application, either by the holder of a safety certificate or by a person to whom it is proposed that it should be transferred⁷, for the transfer of that certificate from the holder to some other person, it is its duty to determine whether that person is a qualified person⁸, and if it determines that he is a qualified person, it may transfer the certificate to him⁹. The local authority must consult the chief officer of police and where the local authority is in Wales, Greater London or a metropolitan county, the fire authority or, in any other case, the building authority about any proposal to amend, replace or transfer a safety certificate¹⁰. The holder of a safety certificate may surrender it to the local authority, and it thereupon ceases to have effect¹¹. The local authority may cancel a safety certificate if the holder dies or, if a body corporate, is dissolved¹².

As soon as practicable after a local authority has decided to replace or amend a safety certificate¹³, or to refuse to amend or replace a safety certificate¹⁴, it must serve on every interested party¹⁵ notice in writing of its decision setting out the relevant information¹⁶, together, in the case of a refusal, with its reasons for it¹⁷. The relevant information means a statement that a copy of the safety certificate and a copy of any application in respect of which the local authority's decision was taken is available for inspection at a place and at the times specified in the notice¹⁸. As soon as may be after this decision, the local authority must cause to be published in a newspaper circulating in the locality of the sports ground to which the safety certificate relates a notice setting out that decision and the information that a copy of the safety certificate and a copy of any application in respect of which the local authority's decision was taken is available for inspection at a place and at the times specified in the notice¹⁹.

Where on an application for the transfer of a safety certificate a local authority determines that the person to whom it is proposed to transfer the certificate: (a) is not a qualified person, it must, in addition to the notice informing that person of that determination that he is not a qualified person²⁰, serve on the holder of the certificate a copy of that notice²¹; (b) is a qualified person but decides not to transfer the certificate, it must serve on that person and the holder of the certificate notice in writing of its decision together with its reasons for it²².

1 For the meaning of 'local authority' see para 428 note 4 ante. The provisions of the Safety of Sports Grounds Act 1975 s 4 (as amended) bind the Crown, but have effect, in relation to premises occupied by the Crown, with the substitution of a reference to the Secretary of State for any reference to the local authority: s 16(1). Nothing in the Safety of Sports Grounds Act 1975 is to be taken to authorise the entry of premises occupied by the Crown: s 16(2).

2 For the meaning of 'safety certificate' see para 429 ante.

3 As to the service of documents see para 430 note 5 ante.

4 Safety of Sports Grounds Act 1975 s 4(1)(a). A notice under s 4(1)(a) amending a general safety certificate must specify the date on which the amendment to which it relates is to come into operation, and the date so specified may be a date later than the date of issue of the notice: s 4(4). For the meaning of 'general safety certificate' see para 429 ante. Section 2 (as amended) (terms and conditions of safety certificate) (see para 429 ante) applies on the amendment of a safety certificate: s 4(3).

5 Ibid s 4(1)(b). Section 2 (as amended) (terms and conditions of safety certificate) (see para 429 ante) applies on the replacement of a safety certificate: s 4(3).

6 Ibid s 4(2). An application for the amendment, replacement or transfer of a safety certificate must be made in writing and any such application must set out the names and addresses of any persons who to the applicant's knowledge will or may be concerned in ensuring compliance with the terms and conditions of the safety certificate as amended, replaced or transferred: Safety of Sports Grounds Regulations 1987, SI 1987/1941, reg 4(2). A local authority may determine the fee to be charged in respect of an application for the amendment, replacement or transfer of a safety certificate but such a fee must not exceed an amount commensurate with the work actually and reasonably done by or on behalf of the local authority in respect of the application: Safety of Sports Grounds Regulations 1987, SI 1987/1941, reg 8.

7 Safety of Sports Grounds Act 1975 s 4(6).

8 For the meaning of 'qualified person' see para 430 ante.

9 Safety of Sports Grounds Act 1975 s 4(5). The local authority must send a copy of an application for the transfer of a safety certificate for a sports ground to the chief officer of police and where the local authority is in Wales, Greater London or a metropolitan county, the fire authority or, in any other case, the building authority for the area in which it is situated: s 4(7) (amended by the Local Government Act 1985 s 16, Sch 8 para 7(1); the Fire Safety and Safety of Places of Sport Act 1987 s 19(1), Sch 2; and the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 47(1)(b)). For the meaning of 'sports ground' see para 428 note 4 ante. As to the chief officer of police see POLICE vol 36(1) (2007 Reissue) para 178 et seq. For the meaning of 'Wales' see para 370 note 1 ante. As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) para 29. For the meaning of 'building authority' see para 430 note 14 ante.

10 Safety of Sports Grounds Act 1975 s 4(8) (amended by the Local Government Act 1985 Sch 8 para 7(1); and the Local Government (Wales) Act 1994 Sch 16 para 47(1)(b)).

11 Safety of Sports Grounds Act 1975 s 4(9).

12 Ibid s 4(10).

13 Safety of Sports Grounds Regulations 1987, SI 1987/1941, reg 5(1)(a), (b).

14 Ibid reg 5(1)(c).

15 For the meaning of 'interested party' see para 430 note 17 ante.

16 Ie the information referred to in the Safety of Sports Grounds Regulations 1987, SI 1987/1941, reg 5(4): see the text to note 18 infra.

17 Ibid reg 5(1).

18 Ibid reg 5(4).

19 Ibid reg 5(5).

20 Ie referred to in the Safety of Sports Grounds Act 1975 s 5(1): see para 432 post.

21 Safety of Sports Grounds Regulations 1987, SI 1987/1941, reg 5(3)(a).

22 Ibid reg 5(3)(b).

UPDATE

428-450 Safety at Sports Grounds etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

431 Amendment, replacement, cancellation and transfer of certificates

TEXT AND NOTES 1-12--A safety certificate has no effect to the extent that it would require a person to contravene any provision of the Regulatory Reform (Fire Safety) Order 2005, SI 2005/154, or regulations made under it: 1975 Act s 4A (added by SI 2005/1541).

TEXT AND NOTES 1-5--The local authority must, if it appears to them that a safety certificate would require a person to contravene any provision of SI 2005/1541, or regulations made under it, amend the safety certificate by notice in writing to its holder; but nothing in the 1975 Act s 4(1A) (added by SI 2005/1541; see TEXT AND NOTES 1-12) is to be taken to require the local authority to take any action unless they are aware of any such inconsistency between a safety certificate and SI 2005/1541: 1975 Act s 4(1A) (as so added).

NOTE 4--Now refers to a notice under *ibid* s 4(1)(a) or s 4(1A): s 4(4) (amended by SI 2005/1541; see TEXT AND NOTES 1-12).

NOTE 9--For 'where ... area in which it' read 'if the local authority is not the fire and rescue authority, the fire and rescue authority, and if the local authority is not the building authority, the building authority for the area in which the sports ground': 1975 Act s 4(7) (amended by the Fire and Rescue Services Act 2004 Sch 1 para 47(2)).

TEXT AND NOTE 10--For 'where ... building authority' read 'if the local authority is not the fire and rescue authority, the fire and rescue authority, and if the local authority is not the building authority, the building authority': 1975 Act s 4(8) (amended by the 2004 Act Sch 1 para 47(3)).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/6. SAFETY AT SPORTS GROUNDS ETC/(1) SAFETY OF SPORTS GROUNDS/432. Appeals in relation to safety certificates.

432. Appeals in relation to safety certificates.

A local authority¹ must serve on a person whom it determines not to be a qualified person² notice³ in writing of its determination, and a person on whom such a notice is served may appeal against the determination to the court⁴. An applicant for a special safety certificate⁵ may also appeal to the court against a refusal of his application on grounds other than a determination that he is not a qualified person⁶. An interested party⁷ may appeal to the court against the inclusion of anything in, or the omission of anything from, a safety certificate, or against the refusal of the local authority to amend or replace a safety certificate⁸, but not against the inclusion in a safety certificate of anything required to be included in it⁹ by the Football Licensing Authority¹⁰. Where an appeal is brought against the inclusion of any term or condition in a safety certificate, whether it was included in the certificate originally or only on its amendment or replacement, the operation of that term or condition is suspended until the court has determined the appeal¹¹.

Such an appeal to the court¹² in England and Wales is by way of complaint for an order, the making of the complaint is deemed to be the bringing of the appeal and the Magistrates' Courts Act 1980¹³ applies to the proceedings¹⁴. In England and Wales the local authority and any interested party may appeal to the Crown Court against such an order¹⁵.

The Secretary of State¹⁶ may by regulations prescribe the time within which such appeals are to be brought¹⁷.

1 For the meaning of 'local authority' see para 428 note 4 ante.

2 For the meaning of 'qualified person' see para 430 ante.

3 As to the service of documents see para 430 note 5 ante.

4 Safety of Sports Grounds Act 1975 s 5(1) (amended by the Fire Safety and Safety of Places of Sport Act 1987 s 22(1), (2)). For these purposes, 'the court' means, in relation to premises in England or Wales, a magistrates' court acting for the petty sessions area in which they are situated: Safety of Sports Grounds Act 1975 s 17(1). For the meaning of 'England' see para 370 note 1 ante. For the meaning of 'Wales' see para 370 note 1 ante. As to magistrates' courts generally see MAGISTRATES.

If the local authority serves a notice under s 5(1) (as amended) on any applicant for a safety certificate, he is deemed to have withdrawn his application on the expiry of the period within which an appeal against the authority's determination may be brought: s 7(1) (amended by the Fire Safety and Safety of Places of Sport Act 1987 s 22(8)(a)). The Safety of Sports Grounds Act 1975 s 7(1) (as amended) does not have effect if an appeal is brought before the expiry of that period, but if the appeal is withdrawn or the court upholds the authority's determination, the appellant will be deemed to have withdrawn his application on the date of the withdrawal of his appeal or of the court's determination: s 7(2) (substituted by the Fire Safety and Safety of Places of Sport Act 1987 s 22(8)(b)). For the meaning of 'safety certificate' see para 429 ante. As to the time within which an appeal may be brought see note 17 infra.

5 For the meaning of 'special safety certificate' see para 429 ante.

6 Safety of Sports Grounds Act 1975 s 5(2) (amended by the Fire Safety and Safety of Places of Sport Act 1987 s 22(1), (2)).

7 For these purposes, 'interested party' includes: (1) the holder of a safety certificate; (2) any other person who is or may be concerned in ensuring compliance with the terms and conditions of a safety certificate; (3) the chief officer of police; and (4) where the local authority is in Wales, Greater London or a metropolitan county, the fire authority or, in any other case, the building authority: Safety of Sports Grounds Act 1975 s 5(5) (amended by the Local Government Act 1985 s 16, Sch 8 para 7(1); the Fire Safety and Safety of Places of Sport

Act 1987 s 22(1), (5); and the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 47(1)(c)). As to the chief officer of police see POLICE vol 36(1) (2007 Reissue) para 178 et seq. As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) para 29. For the meaning of 'building authority' see para 430 note 14 ante.

8 As to the amendment and replacement of safety certificates see para 431 ante.

9 le under the Football Spectators Act 1989 s 13(2): see THEATRES AND OTHER FORMS OF ENTERTAINMENT vol 45(2) (Reissue) para 118.

10 Safety of Sports Grounds Act 1975 s 5(3) (amended by the Fire Safety and Safety of Places of Sport Act 1987 s 22(1), (2); and the Football Spectators Act 1989 s 13(8)). As to the Football Licensing Authority see THEATRES AND OTHER FORMS OF ENTERTAINMENT vol 45(2) (Reissue) para 114.

11 Safety of Sports Grounds Act 1975 s 7(3) (amended by the Fire Safety and Safety of Places of Sport Act 1987 ss 22(8)(c), 49(1), Sch 4).

12 le under the Safety of Sports Grounds Act 1975 s 5 (as amended).

13 See MAGISTRATES.

14 Safety of Sports Grounds Act 1975 s 5(3A) (s 5(3A), (3B), (3C) added by the Fire Safety and Safety of Places of Sport Act 1987 s 22(1), (3)).

15 Safety of Sports Grounds Act 1975 s 5(3C) (as added: see note 14 supra).

16 As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

17 Safety of Sports Grounds Act 1975 s 6(1)(c) (substituted by the Fire Safety and Safety of Places of Sport Act 1987 s 22(7)). An appeal under the Safety of Sports Grounds Act 1975 s 5 must be brought (in accordance with s 5(3A) (as added) (see the text to notes 12-14 supra) or, as the case may be, s 5(3B) (repealed)) in the case of an appeal in respect of: (1) a general safety certificate, not later than 28 days; and (2) a special safety certificate, not later than 7 days, after the relevant date: Safety of Sports Grounds Regulations 1987, SI 1987/1941, reg 6(1). For these purposes, 'relevant date' means: (a) in the case of a person to whom a safety certificate is issued, the date of the receipt by him of that certificate; (b) in the case of a person on whom a notice is served under the Safety of Sports Grounds Act 1975 s 4(1)(a) (see para 431 ante) or s 5(1) (as amended) (see the text to notes 1-4 supra) or the Safety of Sports Grounds Regulations 1987, SI 1987/1941, reg 5(1), reg 5(2) or reg 5(3) (see para 431 ante), the date of the receipt by him of that notice; and (c) in the case of any other person, the date of the publication of the notice required by reg 5(5) (see para 431 ante): reg 6(2). As to the making of regulations generally see para 428 note 2 ante.

UPDATE

428-450 Safety at Sports Grounds etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

432 Appeals in relation to safety certificates

NOTE 7--For 'where ... the building authority' read 'if the local authority is not the fire and rescue authority, the fire and rescue authority, and if the local authority is not the building authority, the building authority': 1975 Act s 5(5) (amended by the Fire and Rescue Services Act 2004 Sch 1 para 47(4)).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/6. SAFETY AT SPORTS GROUNDS ETC/(1) SAFETY OF SPORTS GROUNDS/433. Alterations and extensions of sports grounds.

433. Alterations and extensions of sports grounds.

If while a general safety certificate¹ is in operation with respect to a sports ground², it is proposed to alter or extend that sports ground or any of its installations, and the alteration or extension is likely to affect the safety³ of persons at the sports ground, the holder of the certificate must before the carrying out of the proposals is begun, give notice of the proposals to the local authority⁴. In particular, notice must be given when it is proposed to alter the entrances to or exits from a sports ground or any part of it, including any means of escape in case of fire or other emergency, or the means of access⁵ to any such entrances or exits⁶. Failure to give notice is an offence⁷.

1 For the meaning of 'general safety certificate' see para 429 ante.

2 For the meaning of 'sports ground' see para 428 note 4 ante.

3 As to the meaning of 'safety' see para 428 note 3 ante.

4 Safety of Sports Grounds Act 1975 s 8(1) (amended by the Fire Safety and Safety of Places of Sport Act 1987 s 19(1), Sch 2). For the meaning of 'local authority' see para 428 note 4 ante.

5 For these purposes, 'means of access' includes means of access from a highway: Safety of Sports Grounds Act 1975 s 17(1).

6 Ibid s 8(2) (amended by the Fire Safety and Safety of Places of Sport Act 1987 Sch 2).

7 See the Safety of Sports Grounds Act 1975 s 12(6)(c); and para 438 post.

UPDATE

428-450 Safety at Sports Grounds etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/6. SAFETY AT SPORTS GROUNDS ETC/(1) SAFETY OF SPORTS GROUNDS/434. Exclusion of other statutory requirements.

434. Exclusion of other statutory requirements.

While a general safety certificate¹ is in force in relation to a sports ground², the following statutory provisions do not apply to that sports ground³:

- 351 (1) statutory provisions relating to the safety of platforms, etc erected or used on public occasions⁴;
- 352 (2) statutory provisions relating to public health requirements as to exits and entrances to certain public and other buildings⁵;
- 353 (3) any provision of the Fire Precautions Act 1971 or of a fire certificate issued under that Act in so far as it relates to any matter in relation to which requirements are imposed by the terms and conditions of the safety certificate⁶; and
- 354 (4) any provision of a local Act in so far as it relates to any matter in relation to which requirements are imposed by those terms and conditions⁷.

Where any enactment⁸ provides for the licensing of premises of any class or description and the authority responsible for licences under it is required or authorised to impose terms, conditions or restrictions in connection with such licences, then, so long as a safety certificate is in operation covering the use of the premises by reason of which a licence under that enactment is required, any term, condition or restriction imposed with respect to those premises in connection with any licence under that enactment is of no effect in so far as it relates to any matter in relation to which requirements are imposed by the terms and conditions of that certificate⁹. A person required by or under a local Act to do anything that would involve a contravention of the terms or conditions of a safety certificate is not to be treated as having contravened that Act if he fails to do it¹⁰.

1 For the meaning of 'general safety certificate' see para 429 ante.

2 For the meaning of 'sports ground' see para 428 note 4 ante.

3 Safety of Sports Grounds Act 1975 s 9(1) (amended by the Fire Safety and Safety of Places of Sport Act 1987 s 19(1), Sch 2).

4 Safety of Sports Grounds Act 1975 s 9(1)(a). The text refers to the Public Health Acts Amendment Act 1890 s 37(1) (as amended): see para 450 post.

5 Safety of Sports Grounds Act 1975 s 9(1)(c) (amended by the Building Act 1984 s 133(1), Sch 6 para 15). The text refers to the Building Act 1984 ss 24, 71: see paras 336, 393 ante.

6 Safety of Sports Grounds Act 1975 s 9(1)(d).

7 Ibid s 9(1)(e).

8 Any reference in the Safety of Sports Grounds Act 1975 to any enactment is a reference to it as amended, and includes a reference to it as applied by or under any other enactment, including the Safety of Sports Grounds Act 1975: s 17(2).

9 Ibid s 9(2).

10 Ibid s 9(3).

UPDATE

428-450 Safety at Sports Grounds etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

434 Exclusion of other statutory requirements

NOTE 3--1975 Act s 9(1) amended: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

TEXT AND NOTE 6--1971 Act replaced: SI 2005/1541 (NOTE 3).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/6. SAFETY AT SPORTS GROUNDS ETC/(1) SAFETY OF SPORTS GROUNDS/435. Special procedure in case of serious risk.

435. Special procedure in case of serious risk.

If the local authority¹ is of the opinion that the admission of spectators² to a sports ground³ or any part of it involves or will involve a risk to them so serious that, until steps have been taken to reduce that risk to a reasonable level, admission of spectators to the ground or that part of it ought to be prohibited or restricted, the authority may serve⁴ a prohibition notice⁵:

- 355 (1) if a general safety certificate⁶ is in operation for the ground, on the holder of it⁷;
- 356 (2) if the prohibition or restriction applies to an occasion in respect of which a special safety certificate⁸ is in operation, on the holder of it⁹;
- 357 (3) if no safety certificate¹⁰ is in operation for the ground, on the person who appears to the local authority to be responsible for the management of the ground¹¹;
- 358 (4) if the prohibition or restriction applies to an occasion and no safety certificate is in operation for the ground, on each person who appears to the local authority to be responsible for organising an activity at the ground on that occasion¹²;
- 359 (5) if a general safety certificate is in operation for a stand at the ground, on the holder of it¹³;
- 360 (6) if the prohibition or restriction applies to an occasion in respect of which a special safety certificate for a stand at the ground is in operation, on the holder of it¹⁴.

The validity of a prohibition notice served on any person under any of heads (1) to (6) above is not affected by a failure to serve another person required to be served with such a notice under those heads¹⁵.

A prohibition notice must (a) state that the authority is of the opinion that there is the risk as described above¹⁶; (b) specify the matters which in its opinion give or, as the case may be, will give rise to the risk¹⁷; and (c) direct that no, or no more than a specified number of, spectators must be admitted to, or to a specified part of, the sports ground until the specified matters have been remedied¹⁸. A prohibition notice may prohibit or restrict the admission of spectators generally or on a specified occasion¹⁹. It may include directions as to steps which will have to be taken to reduce the risk to a reasonable level and these may require alterations or additions to the ground or things to be done or omitted which would contravene the terms or conditions of a safety certificate for the ground or for any stand at the ground²⁰. However, no prohibition notice may include directions compliance with which would require the provision of the services at the sports ground of any members of a police force unless the chief officer of police of the force has consented to their inclusion and the extent of the provision of their services is reserved for his determination²¹.

A prohibition or restriction contained in a prohibition notice takes effect immediately it is served if the authority is of the opinion, and so states in the notice, that the risk to spectators is or, as the case may be, will be imminent, and in any other case takes effect at the end of a period specified in the notice²². A copy of any prohibition notice must be sent by the local authority to each of the following, namely: (i) the chief officer of police²³; and (ii) where the local authority is in Wales²⁴, Greater London²⁵ or a metropolitan county, the fire authority, or, in any other case, the building authority²⁶.

The local authority which has served a prohibition notice may, in any case where it appears appropriate to it to do so, amend the prohibition notice by notice served on the persons specified in heads (1) to (6) above²⁷, and copies must be sent to the officer and authorities specified in head (i) and head (ii) above²⁸. Such a notice amending a prohibition notice must specify the date on which the amendment is to come into operation²⁹.

Where a prohibition notice³⁰ or a notice amending a prohibition notice³¹ has been served the local authority may withdraw the notice at any time³².

Any person aggrieved³³ by a prohibition notice or an amendment of it³⁴ may appeal to the court³⁵ against the notice if he does so within such period as the Secretary of State³⁶ may by regulations prescribe³⁷. Such an appeal to the court in England³⁸ and Wales is by way of complaint for an order, the making of the complaint is deemed to be the bringing of the appeal and the Magistrates' Courts Act 1980³⁹ applies to the proceedings⁴⁰. On such an appeal, the court may either cancel or affirm the notice or, in the case of an appeal against an amendment, annul or affirm the amendment and, if it affirms the notice or the notice as amended, as the case may be, may do so either in its original form or as amended, as the case may be, or with such modifications of the notice as the court may in the circumstances think fit⁴¹. Where such an appeal is brought against a prohibition notice or an amendment of it, the bringing of the appeal does not have the effect of suspending the operation of the notice or the notice as amended, as the case may be⁴². The following persons may appeal to the Crown Court against an order made following a complaint: (A) any person aggrieved by the notice⁴³; (B) the local authority⁴⁴; (C) the chief officer of police⁴⁵; and (D) where the local authority is in Wales, Greater London or a metropolitan county, the fire authority, or, in any other case, the building authority⁴⁶.

1 For the meaning of 'local authority' see para 428 note 4 ante.

2 For the meaning of 'spectator' see para 428 note 4 ante.

3 For the meaning of 'sports ground' see para 428 note 4 ante.

4 As to the service of notices see para 430 note 5 ante.

5 Safety of Sports Grounds Act 1975 s 10(1) (s 10 substituted by the Fire Safety and Safety of Places of Sport Act 1987 s 23(1)), Safety of Sports Grounds Act 1975 s 17(1) (amended by the Fire Safety and Safety of Places of Sport Act 1987 s 23(3)(a)). As to the establishment of a public register containing details of prohibition notices see the Environment and Safety Information Act 1988 s 2, Schedule; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 378.

6 For the meaning of 'general safety certificate' see para 429 ante.

7 Safety of Sports Grounds Act 1975 s 10(6)(a) (as substituted: see note 5 supra).

8 For the meaning of 'special safety certificate' see para 429 ante.

9 Safety of Sports Grounds Act 1975 s 10(6)(b) (as substituted: see note 5 supra).

10 For the meaning of 'safety certificate' see para 429 ante.

11 Safety of Sports Grounds Act 1975 s 10(6)(c) (as substituted: see note 5 supra).

12 Ibid s 10(6)(d) (as substituted: see note 5 supra).

13 Ibid s 10(6)(e) (as substituted: see note 5 supra).

14 Ibid s 10(6)(f) (as substituted: see note 5 supra).

15 Ibid s 10(6) (as substituted: see note 5 supra).

16 Ibid s 10(2)(a) (as substituted: see note 5 supra).

- 17 Ibid s 10(2)(b) (as substituted: see note 5 supra).
- 18 Ibid s 10(2)(c) (as substituted: see note 5 supra).
- 19 Ibid s 10(3) (as substituted: see note 5 supra).
- 20 Ibid s 10(4) (as substituted: see note 5 supra).
- 21 Ibid s 10(5) (as substituted: see note 5 supra).
- 22 Ibid s 10(7) (as substituted: see note 5 supra).
- 23 Ibid s 10(8)(a) (as substituted: see note 5 supra). As to the chief officer of police see POLICE vol 36(1) (2007 Reissue) para 178 et seq.
- 24 For the meaning of 'Wales' see para 370 note 1 ante.
- 25 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) para 29.
- 26 Safety of Sports Grounds Act 1975 s 10(8)(b) (as substituted (see note 5 supra); and amended by the Local Government (Wales) Act 1994 Sch 16 para 47(1)(d)). For the meaning of 'building authority' see para 430 note 14 ante.
- 27 Ie subject to the saving in the Safety of Sports Grounds Act 1975 s 10(6) (as substituted): see the text to note 15 supra.
- 28 Ibid s 10(9) (as substituted: see note 5 supra).
- 29 Ibid s 10(10) (as substituted: see note 5 supra).
- 30 Ie under ibid s 10(1) (as substituted): see the text to notes 1-5 supra.
- 31 Ie under ibid s 10(9) (as substituted): see the text to notes 27-28 supra.
- 32 Ibid s 10(11) (as substituted: see note 5 supra).
- 33 For these purposes, the persons who are 'aggrieved' by a prohibition notice are the persons on whom, in accordance with ibid s 10(6) (as substituted) (see the text to notes 6-15 supra), the notice is required to be served: s 10A(9) (s 10A added by the Fire Safety and Safety of Places of Sport Act 1987 s 24). As to persons aggrieved generally see JUDICIAL REVIEW vol 61 (2010) PARA 656.
- 34 The Safety of Sports Grounds Act 1975 s 10A(1) (as added) applies to any amendment of a prohibition notice as it applies to the prohibition notice in its original form: s 10A(2) (as added: see note 33 supra).
- 35 For the meaning of 'the court' see para 432 note 4 ante.
- 36 As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.
- 37 Safety of Sports Grounds Act 1975 s 10A(1), (2) (s 10A as added: see note 33 supra). An appeal by an aggrieved person against a prohibition notice under s 10A(1) (as added) must be brought (in accordance with s 10A(3) (as added) (see the text to notes 38-40 infra) or, as the case may be, s 10A(4) (as added)) not later than 21 days after the day on which the notice was served on him under s 10(1) (as substituted) (see the text to notes 1-5 supra): Safety of Sports Grounds Regulations 1987, SI 1987/1941, reg 7(1). An appeal by an aggrieved person against an amendment to a prohibition notice under the Safety of Sports Grounds Act 1975 s 10A(1) (as added) (as extended by s 10A(2) (as added) (see the text and note 34 supra)) must be brought (in accordance with s 10A(3) (as added) (see the text to notes 38-40 infra) or, as the case may be, s 10A(4) (as added)) not later than 21 days after the day on which the notice amending the prohibition notice was served on him under s 10(9) (as substituted) (see the text to notes 27-28 supra): Safety of Sports Grounds Regulations 1987, SI 1987/1941, reg 7(2). As to the making of regulations generally see para 428 note 2 ante.
- 38 For the meaning of 'England' see para 370 note 1 ante.
- 39 See MAGISTRATES.
- 40 Safety of Sports Grounds Act 1975 s 10A(3) (as added: see note 33 supra).

- 41 Ibid s 10A(5) (as added: see note 33 supra).
- 42 Ibid s 10A(6) (as added: see note 33 supra).
- 43 Ibid s 10A(7)(a) (as added: see note 33 supra).
- 44 Ibid s 10A(7)(b) (as added: see note 33 supra).
- 45 Ibid s 10A(7)(c) (as added: see note 33 supra).
- 46 Ibid s 10A(7)(d) (as added (see note 33 supra); and amended by the Local Government (Wales) Act 1994 Sch 16 para 47(1)(d)).

UPDATE

428-450 Safety at Sports Grounds etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

435 Special procedure in case of serious risk

TEXT AND NOTE 26--Now, heads (ii) if the local authority is not the fire and rescue authority, the fire and rescue authority; (iii) if the local authority is not the building authority, the building authority: 1975 Act s 10(8)(b), (c) (substituted by the Fire and Rescue Services Act 2004 Sch 1 para 47(5)).

TEXT AND NOTE 46--Now, heads (D) if the local authority is not the fire and rescue authority, the fire and rescue authority; and (E) if the local authority is not the building authority, the building authority: 1975 Act s 10A(7)(d), (e) (substituted by the 2004 Act Sch 1 para 47(5)).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/6. SAFETY AT SPORTS GROUNDS ETC/(1) SAFETY OF SPORTS GROUNDS/436. Enforcement.

436. Enforcement.

It is the duty of every local authority¹ to enforce within its area the provisions of the Safety of Sports Grounds Act 1975² and of regulations³ made under it and for that purpose to arrange for the periodical⁴ inspection of designated sports grounds⁵. In performing this duty so far as it requires designated sports grounds in the local authorities' areas to be inspected, local authorities must act in accordance with such guidance as the Secretary of State⁶ may give them⁷.

1 For the meaning of 'local authority' see para 428 note 4 ante.

2 See para 428 et seq ante.

3 As to the making of regulations generally see para 428 note 2 ante.

4 For these purposes, 'periodical' means at least once in every 12 months: Safety of Sports Grounds Act 1975 s 10B(3) (s 10B added by the Fire Safety and Safety of Places of Sport Act 1987 s 25(1)).

5 Safety of Sports Grounds Act 1975 s 10B(1) (as added: see note 4 supra). For the meaning of 'designated sports ground' see para 429 ante.

6 As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

7 Safety of Sports Grounds Act 1975 s 10B(2) (as added: see note 4 supra).

UPDATE

428-450 Safety at Sports Grounds etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/6. SAFETY AT SPORTS GROUNDS ETC/(1) SAFETY OF SPORTS GROUNDS/437. Entry and inspection.

437. Entry and inspection.

A person authorised by:

- 361 (1) the local authority¹;
- 362 (2) the chief officer of police²;
- 363 (3) where the local authority is in Wales³, Greater London⁴ or a metropolitan county, the fire authority or, in any other case, the building authority⁵; or
- 364 (4) the Secretary of State⁶,

may, on production if so required of his authority, enter a sports ground⁷ at any reasonable time, and make such inspection of it and such inquiries relating to it as he considers necessary for the purposes of the Safety of Sports Grounds Act 1975⁸. In particular, he may examine records of attendance at the ground and records relating to the maintenance of safety⁹ at the ground, and take copies of such records¹⁰. Obstruction of this power of entry and inspection is an offence¹¹.

1 Safety of Sports Grounds Act 1975 s 11(a). For the meaning of 'local authority' see para 428 note 4 ante.

2 Ibid s 11(b). As to the chief officer of police see POLICE vol 36(1) (2007 Reissue) para 178 et seq.

3 For the meaning of 'Wales' see para 370 note 1 ante.

4 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) para 29.

5 Safety of Sports Grounds Act 1975 s 11(c) (amended by the Local Government Act 1985 s 16, Sch 8 para 7(1); and the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 47(1)(f)). For the meaning of 'building authority' see para 430 note 14 ante.

6 Safety of Sports Grounds Act 1975 s 11(d). As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

7 For the meaning of 'sports ground' see para 428 note 4 ante.

8 Safety of Sports Grounds Act 1975 s 11. This is not to be taken to authorise the entry of premises occupied by the Crown: s 16(2).

9 As to the meaning of 'safety' see para 428 note 3 ante.

10 Safety of Sports Grounds Act 1975 s 11.

11 See ibid s 12(6)(d); and para 438 post.

UPDATE

428-450 Safety at Sports Grounds etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

437 Entry and inspection

TEXT AND NOTES 3-5--Now, heads (3) if the local authority is not the fire and rescue authority, the fire and rescue authority; and (3A) if the local authority is not the building authority, the building authority: 1975 Act s 11(c), (ca) (substituted by the Fire and Rescue Services Act 2004 Sch 1 para 47(7)).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/6. SAFETY AT SPORTS GROUNDS ETC/(1) SAFETY OF SPORTS GROUNDS/438. Offences.

438. Offences.

Any responsible person¹ and, if a safety certificate² is in operation, the holder of the certificate is guilty of an offence³ if:

- 365 (1) spectators⁴ are admitted to a designated sports ground⁵ after the date on which the designation order⁶ relating to it comes into operation but at a time when no application for a general safety certificate⁷ in respect of it has been made or such an application has been made but has been withdrawn or is deemed to have been withdrawn⁸;
- 366 (2) when a general safety certificate is in operation in respect of a sports ground, spectators are admitted to it on an occasion when it is used for an activity to which neither the general safety certificate nor a special safety certificate⁹ relates¹⁰; or
- 367 (3) spectators are admitted to a designated sports ground on an occasion when, following the surrender or cancellation of a safety certificate, no safety certificate is in operation in respect of that sports ground¹¹; or
- 368 (4) any term or condition of a safety certificate is contravened, otherwise than in pursuance of a prohibition notice¹²; or
- 369 (5) spectators are admitted to a sports ground in contravention of a prohibition notice¹³.

Where any person is charged with such an offence, it is a defence to prove that the spectators were admitted or the contravention of the certificate or prohibition notice in question took place without his consent¹⁴, and that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control¹⁵.

Any person is guilty of an offence¹⁶ who:

- 370 (a) without reasonable excuse refuses, neglects or otherwise fails to comply with a requirement¹⁷ to furnish the Secretary of State with such information as he considers necessary for the purpose of making an estimate as to how many spectators a sports ground has accommodation for, within the time specified by the Secretary of State¹⁸; or
- 371 (b) in purporting to carry out such a requirement, or a requirement¹⁹ to furnish the local authority with such information and such plans as it considers necessary to enable it to determine the terms and conditions which ought to be included in any safety certificate issued, or for the purpose of procuring a safety certificate or its amendment, replacement or transfer, knowingly or recklessly makes a false statement or knowingly or recklessly produces, furnishes, signs or otherwise makes use of a document containing a false statement²⁰; or
- 372 (c) fails to give notice to the local authority²¹ of proposals to alter or extend a sports ground²²; or
- 373 (d) intentionally obstructs any person in the exercise of powers of entry and inspection²³, or without reasonable excuse refuses, neglects or otherwise fails to answer any question asked by any person in the exercise of such powers²⁴.

Where an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and liable to be proceeded against and punished accordingly²⁵.

1 For these purposes, 'responsible person' means a person who is concerned in the management of the sports ground in question or the organisation of any activity taking place there at the time when an offence is alleged to have been committed: Safety of Sports Grounds Act 1975 s 12(2) (amended by the Fire Safety and Safety of Places of Sport Act 1987 ss 19(1), 49(1), Schs 2, 4). For the meaning of 'sports ground' see para 428 note 4 ante.

2 For the meaning of 'safety certificate' see para 429 ante.

3 A person guilty of an offence under heads (1)-(5) in the text is liable (1) on summary conviction to a fine of not more than the prescribed sum; or (2) on conviction on indictment to imprisonment for not more than two years or to a fine or to both: Safety of Sports Grounds Act 1975 s 12(3) (amended by the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see para 329 note 24 ante. Regulations under the Safety of Sports Grounds Act 1975 s 6(2) (see para 428 note 2 ante) may provide that a breach of the regulations is an offence punishable as provided by the regulations, but may not provide that a person guilty of such an offence is liable to punishments greater than those specified in s 12(3) (as amended): s 12(5).

4 For the meaning of 'spectator' see para 428 note 4 ante.

5 For the meaning of 'designated sports ground' see para 429 ante.

6 For the meaning of 'designation order' see para 429 ante.

7 For the meaning of 'general safety certificate' see para 429 ante.

8 Safety of Sports Grounds Act 1975 s 12(1)(a) (amended by the Fire Safety and Safety of Places of Sport Act 1987 s 19(1), Sch 2). As to when an application is deemed to have been withdrawn see the Safety of Sports Grounds Act 1975 s 7(1), (2) (as amended); and para 432 ante.

9 For the meaning of 'special safety certificate' see para 429 ante.

10 Safety of Sports Grounds Act 1975 s 12(1)(b) (amended by the Fire Safety and Safety of Places of Sport Act 1987 Sch 2).

11 Safety of Sports Grounds Act 1975 s 12(1)(c) (amended by the Fire Safety and Safety of Places of Sport Act 1987 Sch 2).

12 Safety of Sports Grounds Act 1975 s 12(1)(d) (amended Fire Safety and Safety of Places of Sport Act 1987 s 23(2)(a)). As to the position if the terms and conditions conflict with a local Act see the Safety of Sports Grounds Act 1975 s 9(3); and para 434 ante.

13 Ibid s 12(1)(e) (amended by the Fire Safety and Safety of Places of Sport Act 1987 s 23(2)(b)). For the meaning of 'prohibition notice' see para 435 ante.

14 Safety of Sports Grounds Act 1975 s 12(4)(a) (amended by the Fire Safety and Safety of Places of Sport Act 1987 s 23(2)(c)).

15 Safety of Sports Grounds Act 1975 s 12(4)(b).

16 A person guilty of an offence under heads (a)-(d) in the text is liable on summary conviction to a fine not exceeding level 5 on the standard scale: *ibid* s 12(6) (amended by the Criminal Justice Act 1982 ss 36, 48). As to the standard scale see para 313 note 7 ante.

17 *Ie* a requirement under the Safety of Sports Grounds Act 1975 s 1(2)(b): see para 429 ante.

18 *Ibid* s 12(6)(a).

19 *Ie* a requirement under *ibid* s 3(4): see para 430 ante.

20 *Ibid* s 12(6)(b).

21 le under ibid s 8(1) (as amended): see para 433 ante.

22 Ibid s 12(6)(c).

23 le powers under ibid s 11 (as amended): see para 437 ante.

24 Ibid s 12(6)(d) (amended by the Fire Safety and Safety of Places of Sport Act 1987 s 25(2)).

25 Safety of Sports Grounds Act 1975 s 12(7). Where the affairs of a body corporate are managed by its members, s 12(7) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: s 12(8).

UPDATE

428-450 Safety at Sports Grounds etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/6. SAFETY AT SPORTS GROUNDS ETC/(1) SAFETY OF SPORTS GROUNDS/439. Civil liability.

439. Civil liability.

Except in so far as the Safety of Sports Grounds Act 1975¹ otherwise expressly provides², and subject to the prohibition on an offender being punished more than once for the same offence³, the provisions of the Safety of Sports Grounds Act 1975 are not to be construed as:

- 374 (1) conferring a right of action in any civil proceedings, other than proceedings for the recovery of a fine, in respect of any contravention of the Safety of Sports Grounds Act 1975 or of any regulations made under that Act or of any of the terms or conditions of a safety certificate⁴; or
- 375 (2) affecting any requirement or restriction imposed by or under any other enactment whether contained in a public general Act or in a local or private Act⁵; or
- 376 (3) derogating from any right of action or other remedy, whether civil or criminal, in proceedings instituted otherwise than under the Safety of Sports Grounds Act 1975⁶.

1 See para 428 et seq ante.

2 As to the exclusion of other statutory requirements see the Safety of Sports Grounds Act 1975 s 9 (as amended); and para 434 ante.

3 I.e. the Interpretation Act 1978 s 18 (see STATUTES vol 44(1) (Reissue) para 1363): see the Safety of Sports Grounds Act 1975 s 13; Interpretation Act 1978 s 17(2)(a).

4 Safety of Sports Grounds Act 1975 s 13(a). For the meaning of 'safety certificate' see para 429 ante.

5 Ibid s 13(b).

6 Ibid s 13(c).

UPDATE

428-450 Safety at Sports Grounds etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/6. SAFETY AT SPORTS GROUNDS ETC/(2) SAFETY OF STANDS AT SPORTS GROUNDS/440. Safety certificates.

(2) SAFETY OF STANDS AT SPORTS GROUNDS

440. Safety certificates.

Part III of the Fire Safety and Safety of Places of Sport Act 1987¹ makes provision in relation to sports grounds² which provide covered accommodation in stands for spectators³, and which are not designated sports grounds⁴.

A safety certificate is required in respect of the use, at such sports grounds, of each stand which provides covered accommodation for 500⁵ or more spectators to view activities at the ground, but one certificate may be issued in respect of several such stands⁶. A stand in respect of the use of which a safety certificate is required is referred to as a 'regulated stand'⁷. It is the function of the local authority⁸ to determine whether any, and if so, which of the stands at a sports ground in its area is a regulated stand, and to issue safety certificates⁹. In determining whether any stand at a sports ground in its area is a regulated stand the local authority may apply any criteria which are appropriate for that purpose¹⁰. In discharging their function of determination as respects the stands at sports grounds in their areas, local authorities must act in accordance with such guidance as the Secretary of State may give them¹¹. A final¹² determination of an authority that a stand at a sports ground is a regulated stand is conclusive of the question, subject to an appeal¹³.

A safety certificate in respect of the use of a regulated stand at a sports ground may be either:

- 377 (1) a 'general safety certificate', namely a certificate in respect of the use of the stand for viewing an activity or a number of activities specified in the certificate during an indefinite period commencing with a date so specified¹⁴; or
- 378 (2) a 'special safety certificate', namely a certificate in respect of the use of the stand for viewing an activity or number of activities specified in the certificate on an occasion or series of specified occasions¹⁵.

A safety certificate for a regulated stand¹⁶ must contain such terms and conditions¹⁷ as the local authority considers necessary or expedient to secure reasonable safety¹⁸ in the stand when it is in use for viewing the specified activity or activities at the ground, and the terms and conditions may be such as to involve alterations or additions to the stand or any installations in or serving the stand¹⁹. No condition of a safety certificate may require the provision of the services in or in the vicinity of the stand of any members of a police force unless the extent of the provision of their services is reserved for the determination of the chief officer of police of the force²⁰. A safety certificate for a regulated stand may include a condition that records be kept of the number of spectators accommodated in covered accommodation in the stand, and relating to the maintenance of safety in the stand²¹.

Contravention of the terms and conditions of a safety certificate is an offence²².

1 Ie the Fire Safety and Safety of Places of Sport Act 1987 Pt III (ss 26-41) (as amended).

2 For the meaning of 'sports ground' see para 428 note 4 ante; definition applied by *ibid* s 41.

3 For these purposes, 'spectator' means any person occupying accommodation provided in stands for spectators at a sports ground: *ibid* s 41. 'Stand', in relation to a sports ground, means an artificial structure, not merely temporary, which provides accommodation for spectators and is wholly or partly covered by a roof, and,

in relation to the number of spectators in a stand provided with covered accommodation; and 'covered' means covered by the roof or other part of the structure which constitutes the stand: ss 26(11), 41.

4 Ibid s 26(1). For the meaning of 'designated sports ground' see para 429 ante; definition applied by s 41. The provisions of ss 26, 27 bind the Crown, but have effect, in relation to premises occupied by the Crown, with the substitution of a reference to the Secretary of State for any reference to the local authority: s 40(1). Nothing in Pt III (as amended) is to be taken to authorise the entry of premises occupied by the Crown: s 40(2). As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

The Secretary of State may, as respects any specified class of stand at sports grounds, by order modify the provisions of Pt III (as amended) in their application to stands of that class: s 39(1). Such an order may make different modifications in relation to different activities taking place at sports grounds, and may include such supplementary and transitional provision as the Secretary of State thinks expedient: s 39(2). The power to make such an order is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 39(3). It is the duty of the Secretary of State, before making such an order, to consult with such persons or bodies of persons as appear to him requisite: s 39(4). At the date at which this volume states the law no such order had been made.

5 The Secretary of State may by order amend ibid s 26(2) by substituting a smaller number for the number for the time being specified in it: s 26(3). The power to make such an order is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 26(4). At the date at which this volume states the law no such order had been made.

6 Ibid s 26(2).

7 Ibid ss 26(5), 41.

8 For these purposes, 'local authority' means: (1) in Greater London, the London borough council or the Common Council of the City of London; (2) in England, in the metropolitan counties, the district council; (3) in England outside Greater London and the metropolitan counties, the county council; (4) in Wales, the county council or county borough council: ibid s 41 (amended by the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 81(2), Sch 18). For the meaning of 'England' see para 370 note 1 ante. For the meaning of 'Wales' see para 370 note 1 ante. As to areas and authorities in England see LOCAL GOVERNMENT vol 69 (2009) PARA 25 et seq; and as to areas and authorities in Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 37 et seq. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) para 51 et seq.

9 Fire Safety and Safety of Places of Sport Act 1987 s 26(6).

10 Ibid s 26(7).

11 Ibid s 26(8).

12 For these purposes, 'final', in relation to a determination, is to be construed in accordance with ibid s 28 (as amended) (see para 441 text to notes 6-11 post): s 26(11).

13 Ibid s 26(9). The text refers to an appeal under s 30 (as amended): see para 443 post.

14 Ibid ss 26(10)(a), (11), 41.

15 Ibid ss 26(10)(b), (11), 41.

16 Any reference in ibid Pt III (as amended) to a safety certificate's being 'for' a stand is a reference to its covering the use of the stand for viewing an activity or activities during an indefinite period or, as the case may be, on an occasion or occasions: s 26(10).

17 A safety certificate for a regulated stand at a sports ground may include different terms and conditions in relation to different activities taking place at the ground: ibid s 27(6). A general safety certificate must contain or have attached to it a plan of the stand to which it applies and the area in the immediate vicinity of it, and the terms and conditions in the certificate or in any special safety certificate issued for the stand must be framed, where appropriate, by reference to that plan: s 27(5).

18 For these purposes, 'safety' does not include safety from danger inherent in participation in a sporting or competitive activity: ibid s 41.

19 Ibid s 27(1). Nothing in a safety certificate for a regulated stand at a sports ground may derogate from any requirements imposed by regulations under the Safety of Sports Grounds Act 1975 s 6(2) (see para 428 ante): Fire Safety and Safety of Places of Sport Act 1987 s 27(7). In so far as an order under s 39 (see note 4

supra) so requires as respects any class of stand at sports grounds, a safety certificate must include such terms and conditions as may be provided for in the order: s 27(2).

20 Ibid s 27(3). As to the chief officer of police see POLICE vol 36(1) (2007 Reissue) para 178 et seq.

21 Ibid s 27(4).

22 See ibid s 36(1)(b); and para 448 post.

UPDATE

428-450 Safety at Sports Grounds etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

440 Safety certificates

TEXT AND NOTES 16-21--1987 Act s 27(3A) added: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/6. SAFETY AT SPORTS GROUNDS ETC/(2) SAFETY OF STANDS AT SPORTS GROUNDS/441. Issue of safety certificates.

441. Issue of safety certificates.

The Secretary of State¹ may by regulations² prescribe the procedure³ for the issue of safety certificates⁴ for regulated stands at sports grounds and the particulars to be given in applications for their issue⁵.

The persons who qualify for the issue of a safety certificate for a regulated stand⁶ at a sports ground⁷ are: (1) in the case of a general safety certificate⁸, the person who is responsible for the management of the ground⁹; and (2) in the case of a special safety certificate¹⁰ for viewing an activity from the stand on any occasion, the person responsible for organising that activity¹¹.

The local authority¹² for an area must, in respect of any stand at a sports ground in its area which appears to it to be a regulated stand, make a preliminary determination whether or not that stand is a regulated stand and, if it determines that it is, it must serve a notice¹³ on the person who appears to it to qualify for the issue of a general safety certificate stating its determination and the effects of the determination¹⁴. A preliminary determination that a stand at a sports ground is a regulated stand becomes final at the end of the period of two months beginning with the date of the notice of it¹⁵. A local authority may revoke its determination that a stand at a sports ground is a regulated stand at any time before it becomes final, or on considering an application for a general safety certificate for the stand, whether the determination has or has not become final¹⁶.

If a local authority receives an application¹⁷ for a general safety certificate for a regulated stand at a sports ground in its area, it is its duty: (a) if it has not already done so, to determine whether the stand is regulated and if it determines that it is, to determine whether the applicant is the person who qualifies for the issue of the general safety certificate for it¹⁸; or (b) if the local authority has made a determination that the stand is a regulated stand and does not decide to revoke it, to determine whether the applicant is the person who qualifies for the issue of the general safety certificate for it¹⁹. If the local authority, on such an application²⁰ in relation to a stand which it has determined or determines is a regulated stand, determines that the applicant is the person who qualifies for the issue of the general safety certificate it must, if no such certificate is in operation, issue such a certificate to him²¹.

If a local authority receives an application for a special safety certificate for a regulated stand at a sports ground in its area as respects which stand a general safety certificate is in operation, it is the authority's duty to determine whether the applicant qualifies for the issue of a special safety certificate for it, and if it determines that he does, it may issue to him a special safety certificate²².

The local authority must, if it determines that an applicant for a safety certificate does not qualify for the issue of the certificate, serve on him a notice stating its determination²³.

The local authority must send a copy of an application for a safety certificate for a regulated stand at a sports ground to the chief officer of police²⁴ and where the local authority is in Wales²⁵, Greater London²⁶ or a metropolitan county, the fire authority or, in any other case, the building authority²⁷ for the area in which it is situated, and must consult them about the terms and conditions to be included in the certificate²⁸. The local authority may, by notice, require an applicant for a safety certificate to furnish it, within such reasonable time as it may specify in the notice with such information and such plans of the ground as it considers necessary for the purpose of discharging its functions in respect of the issue of safety certificates for the regulated stands at the ground²⁹.

As soon as practicable after a local authority has decided to issue a safety certificate, it must serve on every interested party³⁰ notice in writing of its decision³¹. The notice must state that a copy of the safety certificate and a copy of any application in respect of which the local authority's decision was taken is available for inspection at a place and at the times specified in the notice³². As soon as may be after this decision, the local authority must cause to be published in a newspaper circulating in the locality of the regulated stands to which the safety certificate relates a notice setting out that decision and stating that a copy of the safety certificate and a copy of any application in respect of which the local authority's decision was taken is available for inspection at a place and at the times specified in the notice³³.

Where on an application for a special safety certificate a local authority has determined to refuse that application on grounds other than that the applicant does not qualify for the issue of the certificate³⁴, it must as soon as practicable after that refusal, serve on the applicant notice in writing of its decision, together with its reasons for it³⁵.

1 As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

2 Regulations under the Fire Safety and Safety of Places of Sport Act 1987 s 31 may contain such incidental and supplementary provisions as the Secretary of State thinks expedient: s 31(2). The power to make regulations under s 31 is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 31(3). It is the duty of the Secretary of State, before making such regulations, to consult with such persons or bodies of persons as appear to him requisite: s 31(4). In exercise of this power the Safety of Places of Sport Regulations 1988, SI 1988/1807 have been made.

3 The subject to the provisions of the Fire Safety and Safety of Places of Sport Act 1987 Pt III (ss 26-41) (as amended).

4 For the meaning of 'safety certificate' see para 440 ante.

5 Fire Safety and Safety of Places of Sport Act 1987 s 31(1)(a).

6 For the meaning of 'regulated stand' see para 440 ante. For the meaning of 'stand' see para 440 note 3 ante. For the meaning of 'safety certificate for a stand' see para 440 note 16 ante.

7 For the meaning of 'sports ground' see para 428 note 4 ante; definition applied by the Fire Safety and Safety of Places of Sport Act 1987 s 41.

8 For the meaning of 'general safety certificate' see para 440 ante.

9 Fire Safety and Safety of Places of Sport Act 1987 s 28(1)(a). The provisions of s 28 (as amended) bind the Crown, but have effect, in relation to premises occupied by the Crown, with the substitution of a reference to the Secretary of State for any reference to the local authority: s 40(1). Nothing in Pt III (ss 26-41) (as amended) is to be taken to authorise the entry of premises occupied by the Crown: s 40(2).

10 For the meaning of 'special safety certificate' see para 440 ante.

11 Fire Safety and Safety of Places of Sport Act 1987 s 28(1)(b).

12 For the meaning of 'local authority' see para 440 note 8 ante.

13 For these purposes, 'notice' means a notice in writing: Fire Safety and Safety of Places of Sport Act 1987 s 41. Any notice or other document required or authorised by or by virtue of Pt III (as amended) to be served on any person may be served on him either by delivering it to him or by leaving it at his proper address or by sending it by post: s 38(1). Any notice or other document so required or authorised to be served on a body corporate or a firm is duly served if it is served on the secretary or clerk of that body or a partner of that firm: s 38(2). For the purposes of s 38, and of the Interpretation Act 1978 s 7, Sch 2 para 3 (references to service by post) (see STATUTES vol 44(1) (Reissue) para 1388) in its application to the Fire Safety and Safety of Places of Sport Act 1987 s 38, the proper address of a person, in the case of a secretary or clerk of a body corporate is that of the registered or principal office of that body, in the case of a partner of a firm is that of the principal office of the firm, and in any other case is the last known address of the person to be served: s 38(3); Interpretation Act 1978 s 17(2)(a).

14 Fire Safety and Safety of Places of Sport Act 1987 s 28(2). A person may appeal against such a determination: see s 30(1); and para 443 post.

15 Ibid s 28(3). A local authority may, at any time before its determination that a stand at a sports ground is a regulated stand becomes final, withdraw the notice of it and serve a further notice under s 28(2) (see the text to note 14 supra) on another person, but if it does so the period of two months at the end of which the determination becomes final is treated as beginning with the date of the further notice: s 28(5).

16 Ibid s 28(4).

17 The Secretary of State may authorise local authorities to determine, subject to such limits or in accordance with such provisions as may be prescribed by the regulations, the fees, if any, to be charged in respect of applications for the issue of safety certificates: *ibid* s 31(1)(b). The form contained in the Safety of Places of Sport Regulations 1988, SI 1988/1807, reg 3(1), Schedule, or a form to the like effect, must be used for an application for a safety certificate, and a separate application must be made in respect of each regulated stand to which spectators are to be admitted: reg 3(1). A local authority may determine the fee to be charged in respect of an application for the issue of a safety certificate: reg 6(1). Such a fee must not exceed an amount commensurate with the work actually and reasonably done by or on behalf of the local authority in respect of the application: reg 6(2).

18 Fire Safety and Safety of Places of Sport Act 1987 s 28(6)(a). A determination under s 28(6)(a) that a stand is a regulated stand is, when made, a final determination: s 28(6).

19 Ibid s 28(6)(b).

20 *Ie* made under *ibid* s 28(6): see the text to notes 18-19 supra.

21 Ibid s 28(7).

22 Ibid s 28(8).

23 Ibid s 28(9). An appeal may be made against such a determination: see s 30(2); and para 443 post.

24 As to the chief officer of police see *POLICE* vol 36(1) (2007 Reissue) para 178 et seq.

25 For the meaning of 'Wales' see para 370 note 1 ante.

26 As to Greater London see *LONDON GOVERNMENT* vol 29(2) (Reissue) para 29.

27 For these purposes, 'building authority' means, in England outside Greater London and the metropolitan counties, the district council: Fire Safety and Safety of Places of Sport Act 1987 s 41 (amended by the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 81(2), Sch 18).

28 Fire Safety and Safety of Places of Sport Act 1987 s 28(10) (amended by the Local Government (Wales) Act 1994 Sch 16 para 81(1)(a)).

29 Fire Safety and Safety of Places of Sport Act 1987 s 28(11). If an applicant for a safety certificate fails to comply with a requirement under s 28(11) within the time specified by the local authority, or within such further time as it may allow, he is deemed to have withdrawn his application: s 28(12).

30 For these purposes, 'interested party' means:

48 (1) the holder of a safety certificate whose application to have it amended or replaced has been refused (Safety of Places of Sport Regulations 1988, SI 1988/1807, reg 4(8)(a));

49 (2) any other person known to the local authority to be or likely to be concerned in ensuring compliance with the terms and conditions of the safety certificate (reg 4(8)(b));

50 (3) the chief officer of police (reg 4(8)(c)); and

51 (4) where the local authority is in Greater London or a metropolitan county, the fire authority or, in any other case, the building authority (reg 4(8)(d)).

31 Ibid reg 4(1)(a).

32 Ibid reg 4(1), (6).

33 Ibid reg 1(7).

34 le the ground set out in the Fire Safety and Safety of Places of Sport Act 1987 s 28(9): see the text and note 23 supra.

35 Safety of Places of Sport Regulations 1988, SI 1988/1807, reg 4(2).

UPDATE

428-450 Safety at Sports Grounds etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

441 Issue of safety certificates

TEXT AND NOTES 25-28--For 'where ... area in which it' read 'if the local authority is not the fire and rescue authority, the fire and rescue authority and, if the local authority is not the building authority, the building authority, for the area in which the sports ground': 1987 Act s 28(10) (amended by the Fire and Rescue Services Act 2004 Sch 1 para 63(2)).

NOTE 30--Now, head (4) the fire and rescue authority, where the local authority is not the fire and rescue authority, and the building authority, where the local authority is not the building authority: SI 1988/1807 reg 4(8) (amended by SI 2004/3168 (England), SI 2005/2929 (Wales)).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/6. SAFETY AT SPORTS GROUNDS ETC/(2) SAFETY OF STANDS AT SPORTS GROUNDS/442. Amendment, replacement, cancellation and transfer of certificates.

442. Amendment, replacement, cancellation and transfer of certificates.

The Secretary of State¹ may by regulations² prescribe the procedure³ for the issue, cancellation, amendment, replacement and transfer of safety certificates⁴ for regulated stands⁵ at sports grounds⁶ and the particulars to be given in applications for their issue, amendment, replacement or transfer⁷. In exercise of this power, he has made the following provision.

The local authority⁸ which has issued a safety certificate for a regulated stand at a sports ground:

- 379 (1) must, if at any time it appears to the local authority that the stand in respect of which it was issued is not or has ceased to be a regulated stand, revoke its previous determination and, by notice⁹ to its holder, cancel the certificate¹⁰;
- 380 (2) may, in any case where it appears appropriate to the local authority to do so, amend the certificate by notice to its holder¹¹; or
- 381 (3) may replace the certificate¹².

A safety certificate may be cancelled, amended or replaced either on the application of the holder or without such an application¹³. If the local authority receives an application, either by the holder of the safety certificate or by the person to whom it is proposed that it should be transferred¹⁴, for the transfer of a safety certificate for a regulated stand at a sports ground from the holder to some other person it is the local authority's duty to determine whether that person would, if he made an application for the purpose, qualify for the issue of the certificate, and if it determines that he would it may transfer the certificate to him and must in any case notify him of its determination¹⁵. The local authority must consult the chief officer of police and where the local authority is in Wales, Greater London or a metropolitan county, the fire authority or, in any other case, the building authority about any proposal to amend, replace or transfer a safety certificate¹⁶. The holder of a safety certificate may surrender it to the local authority, and it thereupon ceases to have effect¹⁷. The local authority may cancel a safety certificate if the holder dies or, if a body corporate, is dissolved¹⁸.

As soon as practicable after a local authority has decided: (a) to issue a safety certificate by way of replacement of a safety certificate¹⁹; (b) to amend a safety certificate²⁰; or (c) to refuse to amend or replace a safety certificate²¹, it must serve on every interested party²² notice in writing of its decision stating that a copy of the safety certificate and a copy of any application in respect of which the local authority's decision was taken is available for inspection at a place and at the times specified in the notice, together, in the case of a refusal, with the local authority's reasons for it²³. As soon as may be after this decision, the local authority must cause to be published in a newspaper circulating in the locality of the regulated stands to which the safety certificate relates a notice setting out that decision and stating that a copy of the safety certificate and a copy of any application in respect of which the local authority's decision was taken is available for inspection at a place and at the times specified in the notice²⁴.

Where on an application for the transfer of a safety certificate a local authority determines that the person to whom it is proposed to transfer the certificate: (i) is not a qualified person, it must, in addition to the notice required to be sent to the person to whom it is proposed to transfer the certificate informing him that he is not a qualified person²⁵, serve on the holder of the certificate a copy of that notice²⁶; (ii) is a qualified person but decides not to transfer the

certificate, it must serve on that person and the holder of the certificate notice in writing of its decision together with its reasons for it²⁷.

1 As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

2 Such regulations may contain such incidental and supplementary provisions as the Secretary of State thinks expedient: Fire Safety and Safety of Places of Sport Act 1987 s 31(2). The power to make such regulations is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 31(3). It is the duty of the Secretary of State, before making such regulations, to consult with such persons or bodies of persons as appear to him requisite: s 31(4).

3 Ie subject to the provisions of *ibid* Pt III (ss 26-41) (as amended).

4 For the meaning of 'safety certificate' see para 440 ante.

5 For the meaning of 'regulated stand' see para 440 ante. For the meaning of 'stand' see para 440 note 3 ante. For the meaning of 'safety certificate for a stand' see para 440 note 16 ante.

6 For the meaning of 'sports ground' see para 428 note 4 ante; definition applied by the Fire Safety and Safety of Places of Sport Act 1987 s 41.

7 *Ibid* s 31(1)(a).

8 For the meaning of 'local authority' see para 440 note 8 ante.

9 For the meaning of 'notice' see para 441 note 13 ante. As to the service of notices see para 441 note 13 ante.

10 Fire Safety and Safety of Places of Sport Act 1987 s 29(1)(a). As soon as practicable after a local authority has decided to refuse an application for the cancellation of a safety certificate under s 29(1)(a), it must serve on the applicant notice in writing of its decision together with its reasons for it: Safety of Places of Sport Regulations 1988, SI 1988/1807, reg 4(4). As soon as practicable after a local authority has issued a notice under the Fire Safety and Safety of Places of Sport Act 1987 s 29(1)(a) cancelling a safety certificate, it must serve a copy of the notice on the persons referred to in the Safety of Places of Sport Regulations 1988, SI 1988/1807, reg 4(8)(b), (c), (d) (see para 441 note 30 ante): reg 4(5).

The provisions of the Fire Safety and Safety of Places of Sport Act 1987 s 29 (as amended) bind the Crown, but have effect, in relation to premises occupied by the Crown, with the substitution of a reference to the Secretary of State for any reference to the local authority: s 40(1). Nothing in Pt III (as amended) is to be taken to authorise the entry of premises occupied by the Crown: s 40(2).

11 *Ibid* s 29(1)(b). Section 27 (content of safety certificates for stands) (see para 440 ante) applies on the amendment or replacement of a safety certificate: s 29(3). A notice under s 29(1)(b) amending a general safety certificate must specify the date on which the amendment to which it relates is to come into operation, and the date so specified may be a date later than the date of issue of the notice: s 29(4). For the meaning of 'general safety certificate' see para 440 ante.

12 *Ibid* s 29(1)(c).

13 *Ibid* s 29(2). An application for the cancellation, amendment, replacement or transfer of a safety certificate must be made in writing and, except in the case of an application for the cancellation of a safety certificate, must set out the names and addresses of any persons who to the applicant's knowledge will or may be concerned in ensuring compliance with the terms and conditions of a safety certificate as amended, replaced or transferred: Safety of Places of Sport Regulations 1988, SI 1988/1807, reg 4(2). The Secretary of State may by regulations authorise local authorities to determine, subject to such limits or in accordance with such provisions as may be prescribed by the regulations, the fees, if any, to be charged in respect of applications for the issue, amendment, replacement or transfer of safety certificates or in respect of applications for the cancellation of safety certificates for stands which have ceased to be regulated stands: Fire Safety and Safety of Places of Sport Act 1987 s 31(1)(b). A local authority may determine the fee to be charged in respect of an application for the issue, amendment, replacement or transfer of a safety certificate or in respect of an application for the cancellation of a safety certificate for a stand which has ceased to be a regulated stand: Safety of Places of Sport Regulations 1988, SI 1988/1807, reg 6(1). Such a fee must not exceed an amount commensurate with the work actually and reasonably done by or on behalf of the local authority in respect of the application: reg 6(2).

14 Fire Safety and Safety of Places of Sport Act 1987 s 29(6).

15 Ibid s 29(5). The local authority must send a copy of an application for the transfer of a safety certificate for a regulated stand at a sports ground to the chief officer of police and where the local authority is in Wales, Greater London or a metropolitan county the fire authority or, in any other case, the building authority for the area in which it is situated: s 29(7) (amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 81(1)(b)). As to the chief officer of police see POLICE vol 36(1) (2007 Reissue) para 178 et seq. For the meaning of 'Wales' see para 370 note 1 ante. As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) para 29. For the meaning of 'building authority' see para 441 note 27 ante.

16 Fire Safety and Safety of Places of Sport Act 1987 s 29(8) (amended by the Local Government (Wales) Act 1994 Sch 16 para 81(1)(b)).

17 Fire Safety and Safety of Places of Sport Act 1987 s 29(9).

18 Ibid s 29(10).

19 Safety of Places of Sport Regulations 1988, SI 1988/1807, reg 4(1)(a).

20 Ibid reg 4(1)(b).

21 Ibid reg 4(1)(c).

22 For the meaning of 'interested party' see para 441 note 30 ante.

23 Safety of Places of Sport Regulations 1988, SI 1988/1807, reg 4(1), (6).

24 Ibid reg 4(7).

25 In the notice referred to in the Fire Safety and Safety of Places of Sport Act 1987 s 29(5): see the text to note 15 supra.

26 Safety of Places of Sport Regulations 1988, SI 1988/1807, reg 4(3)(a).

27 Ibid reg 4(3)(b).

UPDATE

428-450 Safety at Sports Grounds etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

442 Amendment, replacement, cancellation and transfer of certificates

TEXT AND NOTES 8-18--1987 Act s 29A added: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

TEXT AND NOTES 8-12--1987 Act s 29(1A) added: SI 2005/1541 (see TEXT AND NOTES 8-18).

NOTE 11--1987 Act s 29(4) amended: SI 2005/1541 (see TEXT AND NOTES 8-18).

TEXT AND NOTE 16--For 'where ... the building authority' read 'if the local authority is not the fire and rescue authority, the fire and rescue authority, and if the local authority is not the building authority, the building authority': 1987 Act s 29(8) (amended by the Fire and Rescue Services Act 2004 Sch 1 para 63(3)).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/6. SAFETY AT SPORTS GROUNDS ETC/(2) SAFETY OF STANDS AT SPORTS GROUNDS/443. Appeals.

443. Appeals.

A person who has been served with a notice¹ of a determination, which is or has become a final² determination, of a local authority³ that any stand⁴ at a sports ground⁵ is a regulated stand⁶ may appeal against the determination to the court⁷. Any person who, on an application for the issue or transfer to him of a safety certificate⁸ for a regulated stand at a sports ground, has been served with a notice of the determination of a local authority that he does not or, in the case of an application for a transfer, would not qualify for the issue of the certificate may appeal against the determination to the court⁹. An applicant for a special safety certificate¹⁰ for a regulated stand at a sports ground may also appeal to the court against a refusal of his application on grounds other than a determination that he does not qualify for the issue of the certificate¹¹. An interested party¹² may appeal to the court against the inclusion of anything in, or the omission of anything from, a safety certificate for a regulated stand at a sports ground, or the refusal of the local authority to amend or replace a safety certificate for a regulated stand at a sports ground¹³.

Any appeal¹⁴ must be brought within the period prescribed¹⁵ by regulations¹⁶. An appeal to the court in England and Wales is by way of complaint for an order, the making of the complaint is deemed to be the bringing of the appeal and the Magistrates' Courts Act 1980¹⁷ applies to the proceedings¹⁸.

If a local authority serves on any applicant for a safety certificate a notice of its determination that he does not qualify for the issue of the certificate, he is deemed to have withdrawn his application on the expiry of the period within which an appeal must¹⁹ be brought²⁰. This does not have effect if an appeal is brought before the expiry of that period, but if the appeal is withdrawn or the court upholds the authority's determination, the appellant is deemed to have withdrawn his application on the date of the withdrawal of his appeal or of the court's order on the appeal²¹.

Where an appeal is brought against the inclusion of any term or condition in a safety certificate, whether it was included in the certificate originally or only on its amendment or replacement, the operation of that term or condition is suspended until the court has determined the appeal²².

In England and Wales the local authority and any interested party may appeal to the Crown Court against an order made as the result of an appeal²³.

1 For the meaning of 'notice' see para 441 note 13 ante. As to the service of notices see para 441 note 13 ante.

2 For these purposes, 'final', in relation to a determination, is to be construed in accordance with the Fire Safety and Safety of Places of Sport Act 1987 s 28 (as amended) (see para 441 ante).

3 For the meaning of 'local authority' see para 440 note 8 ante.

4 For the meaning of 'stand' see para 440 note 3 ante.

5 For the meaning of 'sports ground' see para 428 note 4 ante; definition applied by the Fire Safety and Safety of Places of Sport Act 1987 s 41.

6 For the meaning of 'regulated stand' see para 440 ante.

7 Fire Safety and Safety of Places of Sport Act 1987 s 30(1). For these purposes, 'the court' means, in relation to a sports ground in England and Wales, a magistrates' court acting for the petty sessions area in

which it is situated: s 41. For the meaning of 'England' see para 370 note 1 ante. For the meaning of 'Wales' see para 370 note 1 ante.

8 For the meaning of 'safety certificate' see para 440 ante.

9 Fire Safety and Safety of Places of Sport Act 1987 s 30(2).

10 For the meaning of 'special safety certificate' see para 440 ante.

11 Fire Safety and Safety of Places of Sport Act 1987 s 30(3).

12 For these purposes, 'interested party' in relation to a safety certificate, includes: (1) the holder of the certificate; (2) any other person who is or may be concerned in ensuring compliance with the terms and conditions of the certificate; (3) the chief officer of police; and (4) where the local authority is in Wales, Greater London or a metropolitan county, the fire authority or, in any other case, the building authority: *ibid* s 30(8) (amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 81(1)(c)).

13 Fire Safety and Safety of Places of Sport Act 1987 s 30(4).

14 *Ie* under *ibid* s 30 (as amended).

15 The Secretary of State may by regulations prescribe the time within which appeals under *ibid* s 30 (as amended) are to be brought: s 31(1)(c). Such regulations may contain such incidental and supplementary provisions as the Secretary of State thinks expedient: s 31(2). The power to make such regulations is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 31(3). It is the duty of the Secretary of State, before making such regulations, to consult with such persons or bodies of persons as appear to him requisite: s 31(4). As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

An appeal under s 30(1) must be brought not later than 28 days: (1) in the case of a preliminary determination, after the date when that determination becomes final under s 28(3) (see para 441 ante); or (2) in the case of a final determination under s 28(6) (see para 441 ante), after the date of the receipt of the notice of that determination: Safety of Places of Sport Regulations 1988, SI 1988/1807, reg 5(1). An appeal under the Fire Safety and Safety of Places of Sport Act 1987 s 30(2), s 30(3) or s 30(4) must be brought in the case of an appeal in respect of: (a) a general safety certificate, not later than 28 days; and (b) a special safety certificate, not later than 7 days, after the relevant date: Safety of Places of Sport Regulations 1988, SI 1988/1807, reg 5(2). For these purposes, 'relevant date' means: (i) in the case of a person to whom a safety certificate is issued, the date of the receipt by him of that certificate; (ii) in the case of a person on whom a notice is served under the Fire Safety and Safety of Places of Sport Act 1987 s 28(9) (see para 441 ante), s 29(1)(b) or s 29(5) (see para 442 ante) or the Safety of Places of Sport Regulations 1988, SI 1988/1807, reg 4(1), reg 4(2) or reg 4(3) (see para 442 ante), the date of the receipt by him of that notice; and (iii) in the case of any other person, the date of the publication of the notice required by reg 4(7) (see para 442 ante): reg 5(3).

16 Fire Safety and Safety of Places of Sport Act 1987 s 30(5).

17 See MAGISTRATES.

18 Fire Safety and Safety of Places of Sport Act 1987 s 30(6).

19 *Ie* by virtue of *ibid* s 30(5): see the text to notes 14-16 *supra*.

20 *Ibid* s 30(9).

21 *Ibid* s 30(10).

22 *Ibid* s 30(11).

23 *Ibid* s 30(12).

UPDATE

428-450 Safety at Sports Grounds etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

443 Appeals

NOTE 7--Words 'acting ... situated' omitted: 1987 Act s 41 (amended by the Courts Act 2003 Sch 8 para 301, Sch 10).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/6. SAFETY AT SPORTS GROUNDS ETC/(2) SAFETY OF STANDS AT SPORTS GROUNDS/444. Alterations and extensions.

444. Alterations and extensions.

If while a general safety certificate¹ for a regulated stand² at a sports ground³ is in operation it is proposed to alter or extend the stand or its installations, and the alteration or extension is likely to affect the safety⁴ of persons in the stand, the holder of the certificate must, before the carrying out of the proposals is begun, give notice⁵ of the proposals to the local authority⁶. In particular, notice must be given when it is proposed to alter the entrances to or exits from a regulated stand at a sports ground, including any means of escape in case of fire or other emergency, or the means of access⁷ to any such entrances or exits⁸.

1 For the meaning of 'general safety certificate' see para 440 ante.

2 For the meaning of 'regulated stand' see para 440 ante. For the meaning of 'stand' see para 440 note 3 ante. For the meaning of 'safety certificate for a stand' see para 440 note 16 ante.

3 For the meaning of 'sports ground' see para 428 note 4 ante; definition applied by the Fire Safety and Safety of Places of Sport Act 1987 s 41.

4 As to the meaning of 'safety' see para 440 note 18 ante.

5 For the meaning of 'notice' see para 441 note 13 ante. As to the service of notices see para 441 note 13 ante.

6 Fire Safety and Safety of Places of Sport Act 1987 s 32(1). For the meaning of 'local authority' see para 440 note 8 ante.

7 For these purposes, 'means of access' includes means of access from a highway: *ibid* s 41.

8 *Ibid* s 32(2).

UPDATE

428-450 Safety at Sports Grounds etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/6. SAFETY AT SPORTS GROUNDS ETC/(2) SAFETY OF STANDS AT SPORTS GROUNDS/445. Exclusion of other statutory requirements.

445. Exclusion of other statutory requirements.

While a general safety certificate¹ is in force² for a regulated stand³ at a sports ground⁴, the following statutory provisions do not apply to that stand⁵:

- 382 (1) provisions relating to the safety of platforms, etc erected or used on public occasions⁶;
- 383 (2) any provision of the Fire Precautions Act 1971⁷ or of a fire certificate issued under that Act in so far as it relates to any matter in relation to which requirements are imposed by the terms and conditions of the safety certificate⁸;
- 384 (3) public health requirements as to exits and entrances to certain public and other buildings⁹; and
- 385 (4) any provision of a local Act in so far as it relates to any matter in relation to which requirements are imposed by the terms and conditions of the safety certificate¹⁰.

Where an enactment provides for the licensing of premises of any class or description and the authority responsible for such licences is required or authorised to impose terms, conditions or restrictions in connection with such licences, then, so long as there is in operation with respect to the premises a safety certificate¹¹ covering the use of the premises by reason of which a licence under that enactment is required, any term, condition or restriction imposed with respect to those premises in connection with any licence under that enactment is of no effect in so far as it relates to any matter in relation to which requirements are imposed by the terms and conditions of the certificate¹². A person required by or under a local Act to do anything that would involve a contravention of the terms or conditions of a safety certificate must not be treated as having contravened that Act if he fails to do it¹³.

1 For the meaning of 'general safety certificate' see para 440 ante.

2 Ie under the Fire Safety and Safety of Places of Sport Act 1987 Pt III (ss 26-41) (as amended).

3 For the meaning of 'regulated stand' see para 440 ante. For the meaning of 'stand' see para 440 note 3 ante. For the meaning of 'safety certificate for a stand' see para 440 note 16 ante.

4 For the meaning of 'sports ground' see para 428 note 4 ante; definition applied by the Fire Safety and Safety of Places of Sport Act 1987 s 41.

5 Ibid s 33(1).

6 Ibid s 33(1)(a). The text refers to the Public Health Acts Amendment Act 1890 s 37(1) (as amended): see para 450 post.

7 See FIRE SERVICES.

8 Fire Safety and Safety of Places of Sport Act 1987 s 33(1)(b).

9 Ibid s 33(1)(d). The text refers to the Building Act 1984 ss 24, 71: see paras 336, 393 ante.

10 Fire Safety and Safety of Places of Sport Act 1987 s 33(1)(e). For the meaning of 'safety certificate' see para 440 ante.

11 Ie under ibid Pt III (as amended).

12 Ibid s 33(2).

13 Ibid s 33(3).

UPDATE

428-450 Safety at Sports Grounds etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

445 Exclusion of other statutory requirements

TEXT AND NOTES 7, 8--1987 Act s 33(1)(b) repealed: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

TEXT AND NOTE 7--1971 Act replaced: SI 2005/1541 (see TEXT AND NOTES 7, 8).

TEXT AND NOTE 9--Text now refers to the 1984 Act s 24 only: 1987 Act s 33(1)(d) (amended by SI 2005/1541; TEXT AND NOTES 7, 8).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/6. SAFETY AT SPORTS GROUNDS ETC/(2) SAFETY OF STANDS AT SPORTS GROUNDS/446. Enforcement.

446. Enforcement.

It is the duty of every local authority¹ to enforce within its area the statutory provisions contained in Part III of the Fire Safety and Safety of Places of Sport Act 1987² relating to safety certificates³ for stands⁴ at sports grounds⁵ and for that purpose to arrange for the periodical inspection of sports grounds at which there are regulated stands⁶. In performing this duty so far as it requires sports grounds in local authorities' areas to be inspected, local authorities must act in accordance with such guidance as the Secretary of State⁷ may give them⁸.

1 For the meaning of 'local authority' see para 440 note 8 ante.

2 Ie the provisions of the Fire Safety and Safety of Places of Sport Act 1987 Pt III (ss 26-41) (as amended).

3 For the meaning of 'safety certificate' see para 440 ante.

4 For the meaning of 'stand' see para 440 note 3 ante. For the meaning of 'safety certificate for a stand' see para 440 note 16 ante.

5 For the meaning of 'sports ground' see para 428 note 4 ante; definition applied by the Fire Safety and Safety of Places of Sport Act 1987 s 41.

6 Ibid s 34(1). For the meaning of 'regulated stand' see para 440 ante.

7 As to the Secretary of State see para 301 note 3 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 301 note 3 ante.

8 Fire Safety and Safety of Places of Sport Act 1987 s 34(2).

UPDATE

428-450 Safety at Sports Grounds etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/6. SAFETY AT SPORTS GROUNDS ETC/(2) SAFETY OF STANDS AT SPORTS GROUNDS/447. Entry and inspection.

447. Entry and inspection.

A person authorised by:

- 386 (1) the local authority¹;
- 387 (2) the chief officer of police²; or
- 388 (3) where the local authority is in Wales³, Greater London⁴ or a metropolitan county, the fire authority or, in any other case, the building authority⁵,

may, on production if so required of his authority, enter a sports ground⁶ at any reasonable time, and make such inspection of the stands⁷ and such inquiries relating to them as he considers necessary for the purposes of Part III of the Fire Safety and Safety of Places of Sport Act 1987⁸. In particular he may examine records of the number of spectators⁹ accommodated, and the maintenance of safety¹⁰, in the regulated stands¹¹ at the ground, and take copies of such records¹².

1 Fire Safety and Safety of Places of Sport Act 1987 s 35(a). For the meaning of 'local authority' see para 440 note 8 ante.

2 Ibid s 35(b). As to the chief officer of police see POLICE vol 36(1) (2007 Reissue) para 178 et seq.

3 For the meaning of 'Wales' see para 370 note 1 ante.

4 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) para 29.

5 Fire Safety and Safety of Places of Sport Act 1987 s 35(c) (amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 81(1)(d)). For the meaning of 'building authority' see para 441 note 27 ante.

6 For the meaning of 'sports ground' see para 428 note 4 ante; definition applied by the Fire Safety and Safety of Places of Sport Act 1987 s 41.

7 For the meaning of 'stand' see para 440 note 3 ante.

8 Ie the Fire Safety and Safety of Places of Sport Act 1987 Pt III (ss 26-41) (as amended).

9 For the meaning of 'spectator' see para 440 note 3 ante.

10 As to the meaning of 'safety' see para 440 note 18 ante.

11 For the meaning of 'regulated stand' see para 440 ante.

12 Fire Safety and Safety of Places of Sport Act 1987 s 35.

UPDATE

428-450 Safety at Sports Grounds etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

447 Entry and inspection

TEXT AND NOTES 3-5--Now, head (3) if the local authority is not the fire and rescue authority, the fire and rescue authority, or (4) if the local authority is not the building authority, the building authority: 1987 Act s 35(c), (d) (substituted by the Fire and Rescue Services Act 2004 Sch 1 para 63(5)).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/6. SAFETY AT SPORTS GROUNDS ETC/(2) SAFETY OF STANDS AT SPORTS GROUNDS/448. Offences.

448. Offences.

Any responsible person¹ and, if a safety certificate² is in operation, the holder of the certificate is guilty of an offence³ if:

- 389 (1) spectators⁴ are admitted to a regulated stand at a sports ground on an occasion when no safety certificate which covers their use of the stand is in operation for it⁵; or
- 390 (2) any term or condition of a safety certificate for a regulated stand at a sports ground is contravened⁶.

Where any person is charged with such an offence, it is a defence to prove that the spectators were admitted or the contravention of the certificate took place without his consent and that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control⁷. Where any person is charged as a responsible person with an offence under head (1) above, it is a defence to prove that he did not know of the determination that the stand in relation to which the offence is alleged to have been committed is a regulated stand⁸.

Any person is guilty of an offence⁹ who:

- 391 (a) in purporting to carry out a requirement to furnish a local authority with such information and such plans of the ground as it considers necessary for the purpose of discharging its functions in respect of the issue of safety certificates¹⁰, or for the purpose of procuring a safety certificate or the cancellation, amendment, replacement or transfer of a safety certificate, knowingly or recklessly makes a false statement or knowingly or recklessly produces, furnishes, signs or otherwise makes use of a document containing a false statement¹¹;
- 392 (b) fails to give a notice¹² of the proposed alteration or extension of a stand¹³; or
- 393 (c) intentionally obstructs any person in the exercise of powers of entry and inspection¹⁴, or without reasonable excuse refuses, neglects or otherwise fails to answer any question asked by any person in the exercise of such powers¹⁵.

Where an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in that capacity, he, as well as the body corporate, is guilty of that offence and liable to be proceeded against and punished accordingly¹⁶.

1 For these purposes, 'responsible person' means the person who is concerned in the management of the sports ground or of the regulated stand in question or in the organisation of any activity taking place at the ground at the time when an offence is alleged to have been committed: Fire Safety and Safety of Places of Sport Act 1987 s 36(3). For the meaning of 'sports ground' see para 428 note 4 ante; definition applied by s 41. For the meaning of 'stand' see para 440 note 3 ante. For the meaning of 'regulated stand' see para 440 ante.

2 For the meaning of 'safety certificate' see para 440 ante.

3 A person guilty of an offence under head (1) or head (2) in the text is liable (1) on summary conviction, to a fine not exceeding the statutory maximum; or (2) on conviction on indictment, to a fine or to imprisonment for

a term not exceeding two years or both: Fire Safety and Safety of Places of Sport Act 1987 s 36(4). As to the statutory maximum see para 329 note 24 ante.

4 For the meaning of 'spectator' see para 440 note 3 ante.

5 Fire Safety and Safety of Places of Sport Act 1987 s 36(1)(a). No offence under s 36(1)(a) is committed if the determination that the stand is a regulated stand is not a final one, or if an application has been made for a general safety certificate for the stand and has not been withdrawn or deemed to have been withdrawn: s 36(2). For these purposes, 'final', in relation to a determination, is to be construed in accordance with s 28 (as amended) (see para 441 ante): s 26(11). For the meaning of 'general safety certificate' see para 440 ante.

6 Ibid s 36(1)(b).

7 Ibid s 36(5).

8 Ibid s 36(6).

9 A person guilty of an offence under heads (a)-(c) in the text is liable on summary conviction to a fine not exceeding level 5 on the standard scale: ibid s 36(7). As to the standard scale see para 313 note 7 ante.

10 Ie in purporting to carry out a requirement under ibid s 28(11): see para 441 ante.

11 Ibid s 36(7)(a). As to the issue, cancellation, amendment, replacement and transfer of safety certificates see paras 441-442 ante.

12 Ie under ibid s 32(1) (see para 444 ante). For the meaning of 'notice' see para 441 note 13 ante. As to the service of notices see para 441 note 13 ante.

13 Ibid s 36(7)(b).

14 Ie powers under ibid s 35: see para 447 ante.

15 Ibid s 36(7)(c).

16 Ibid s 36(8). Where the affairs of a body corporate are managed by its members, s 36(8) applies to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: s 36(9).

UPDATE

428-450 Safety at Sports Grounds etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/6. SAFETY AT SPORTS GROUNDS ETC/(2) SAFETY OF STANDS AT SPORTS GROUNDS/449. Liability.

449. Liability.

Except in so far as Part III of the Fire Safety and Safety of Places of Sport Act 1987 otherwise expressly provides and subject to the prohibition on an offender being punished more than once for the same offence², the provisions of Part III may not be construed as:

- 394 (1) conferring a right of action in any civil proceedings, other than proceedings for the recovery of a fine, in respect of any contravention of Part III or of any of the terms or conditions of a safety certificate³; or
- 395 (2) affecting any requirement or restriction imposed by or under any other enactment whether contained in a public general Act or a local or private Act⁴; or
- 396 (3) derogating from any right of action or other remedy, whether civil or criminal, in proceedings instituted otherwise than under Part III⁵.

1 In the Fire Safety and Safety of Places of Sport Act 1987 Pt III (ss 26-41) (as amended).

2 In the Interpretation Act 1978 s 18: see STATUTES vol 44(1) (Reissue) para 1363.

3 Fire Safety and Safety of Places of Sport Act 1987 s 37(a). For the meaning of 'safety certificate' see para 440 ante.

4 Ibid s 37(b).

5 Ibid s 37(c).

UPDATE

428-450 Safety at Sports Grounds etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/6. SAFETY AT SPORTS GROUNDS ETC/(3) SAFETY OF PLATFORMS AND OTHER STRUCTURES/450. Platforms and other structures for public occasions.

(3) SAFETY OF PLATFORMS AND OTHER STRUCTURES

450. Platforms and other structures for public occasions.

Whenever large numbers of persons are likely to assemble on the occasion of any show, entertainment, public procession, open air meeting or other like occasion, every roof of a building, and every platform, balcony or other structure or part of it let or used or intended to be let or used for the purpose of affording sitting or standing accommodation for a number of persons must be safely constructed or secured¹. Any person who uses or allows to be used any roof of a building, platform, balcony or structure not so safely constructed or secured, or who neglects to comply with these provisions, is liable to a penalty².

1 Public Health Acts Amendment Act 1890 s 37(1). Section 37(1) refers to platforms, etc being safely constructed or secured to the satisfaction of the surveyor of the urban sanitary authority (see s 11(3) (amended by the Local Government Act 1972 s 272(1), Sch 30), Public Health Acts Amendment Act 1890 s 37(1)), but functions of sanitary authorities are now largely carried out by local authorities. While a general safety certificate is in force in relation to a sports ground under the Safety of Sports Grounds Act 1975 or the Fire Safety and Safety of Places of Sport Act 1987 (see para 429 ante), the requirements of the Public Health Acts Amendment Act 1890 s 37(1) do not apply to that ground: see the Safety of Sports Grounds Act 1975 s 9(1) (as amended) (see para 434 ante); and the Fire Safety and Safety of Places of Sport Act 1987 s 33(1)(a) (see para 445 ante).

2 Public Health Acts Amendment Act 1890 s 37(2). The penalty is one not exceeding level 3 on the standard scale: s 37(2) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 313 note 7 ante.

UPDATE

428-450 Safety at Sports Grounds etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/7. PREMISES FOR STORAGE OF CELLULOID FILM/451. The legislation.

7. PREMISES FOR STORAGE OF CELLULOID FILM

451. The legislation.

With the object of preventing fire, the Celluloid and Cinematograph Film Act 1922¹ regulates the use of premises where raw celluloid² or cinematograph film³ is kept or stored⁴. The Act does not apply to premises licensed⁵ for film exhibitions under the Cinemas Act 1985⁶ or, with certain exceptions⁷ to premises to which the Factories Act 1961⁸ applies⁹. Nor does it apply where the Health and Safety Executive¹⁰ has granted a certificate exempting any premises, class of premises, person or class of persons from the appropriate provisions¹¹.

It is the duty of local authorities¹² to see that the provisions of the Celluloid and Cinematograph Film Act 1922 are duly complied with¹³.

1 Crown immunity in respect of the Celluloid and Cinematograph Film Act 1922 is extended to visiting forces, etc: see the Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 12(1), Sch 5.

2 For these purposes, 'celluloid' means and includes the substances known as celluloid and xylonite and other similar substances, containing nitrated cellulose or other nitrated products, but does not include any substances which are explosives within the meaning of the Explosives Act 1875 (see EXPLOSIVES vol 17(2) (Reissue) para 905): Celluloid and Cinematograph Film Act 1922 s 9. 'Raw celluloid' means celluloid which has not been subjected to any process of manufacture, and celluloid scrap or waste: s 9.

3 'Cinematograph film' means any film containing celluloid which is intended for use in a cinematograph or any similar apparatus: *ibid* s 9.

4 *Ibid* s 2(1), (2).

5 *Ie* licensed in accordance with the Cinemas Act 1985 s 1: see LICENSING AND GAMBLING vol 67 (2008) PARA 255.

6 Celluloid and Cinematograph Film Act 1922 s 2 proviso (iii) (amended by the Cinemas Act 1985 s 24(1), Sch 2 para 1).

7 The exceptions are the cases referred to in the Celluloid and Cinematograph Film Act 1922 s 1(1)(c)-(e): see para 453 post.

8 See HEALTH AND SAFETY AT WORK.

9 Celluloid and Cinematograph Film Act 1922 s 2 proviso (ii); Factories Act 1961 s 184(1) (amended by the Local Government and Rating Act 1997 s 33(2), Sch 4). See further the regulations dated 28 November 1921 (Celluloid, etc, Factories and Workshops), SR & O 1921/1825 (amended by SR & O 1928/82); the Manufacture of Cinematograph Film Regulations 1928, SR & O 1928/82; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 850.

10 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

11 See the Celluloid and Cinematograph Film Act 1922 (Exemptions) Regulations 1980, SI 1980/1314, reg 2(1). The Health and Safety Executive may, by such a certificate in writing, exempt any premises, class of premises, person or class of persons from any requirement or prohibition imposed by or under the Celluloid and Cinematograph Film Act 1922 s 1(1) (as amended) (see para 453 post), or any order made under s 1(4) (repealed with savings) (see para 453 note 9 post), and any such exemption may be granted subject to conditions and to a limit of time and may be revoked at any time: Celluloid and Cinematograph Film Act 1922 (Exemptions) Regulations 1980, SI 1980/1314, reg 2(1). However, the HSE must not grant any such exemption unless, having regard to the circumstances of the case, and in particular to the conditions, if any, which it proposes to attach to the exemption, and to any other requirements imposed by or under any enactment which

apply to the case, it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it: reg 2(2).

12 For these purposes, 'local authority' means the council of a county or county borough or London borough or the Common Council of the City of London and in a metropolitan county means the fire authority: Celluloid and Cinematograph Film Act 1922 s 9 (amended by the Local Government Act 1972 s 251, Sch 29 para 15; the Local Government Act 1985 s 37, Sch 11 para 6; and the Local Government (Wales) Act 1994 s 22(3), Sch 9 para 1).

13 Celluloid and Cinematograph Film Act 1922 s 4(1).

UPDATE

451-457 Premises for Storage of Celluloid Film

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

451 The legislation

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 2--In the definition of 'celluloid', the reference to the Explosives Act 1875 is now to the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: 1922 Act s 9 (amended by SI 2005/1082).

NOTE 4--1922 Act s 2 amended: Licensing Act 2003 Sch 6 para 10; and Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

NOTE 5--Cinemas Act 1985 repealed: Licensing Act 2003 Sch 6 para 95.

NOTE 12--For 'fire authority' read 'fire and rescue authority': 1922 Act s 9 (amended by the Fire and Rescue Services Act 2004 Sch 1 para 3).

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/7. PREMISES FOR STORAGE OF CELLULOID FILM/452. Purposes to which the legislation applies.

452. Purposes to which the legislation applies.

The Celluloid and Cinematograph Film Act 1922 applies¹ to the keeping or storing² of:

- 397 (1) raw celluloid³ in quantities exceeding at any one time 50 kilograms⁴, or in smaller quantities unless kept, except when required to be exposed for the purpose of the work carried on in the premises, in a properly closed metal box or case⁵; and
- 398 (2) cinematograph film in quantities exceeding at any one time 20 reels, or 37 kilograms in weight⁶, or in smaller quantities unless each reel is kept, except when required to be exposed for the purpose of the work carried on in the premises, in a separate and properly closed metal box or case⁷.

1 As to the exception of premises subject to certain other legislation see para 451 ante.

2 Cinematograph film is deemed to be kept in any premises where it is temporarily deposited for the purpose of examination, cleaning, packing, re-winding or repair, but celluloid or cinematograph film is not deemed to be kept or stored in any premises where it is temporarily deposited whilst in the course of delivery, conveyance or transport: Celluloid and Cinematograph Film Act 1922 s 2 proviso (i). For the meaning of 'cinematograph film' see para 451 note 3 ante. For the meaning of 'celluloid' see para 451 note 2 ante.

3 For the meaning of 'raw celluloid' see para 451 note 2 ante.

4 Celluloid and Cinematograph Film Act 1922 s 2(1)(a) (amended by the Health and Safety (Miscellaneous Provisions) (Metrication etc) Regulations 1992, SI 1992/1811, reg 3(1), Sch 1 Pt I).

5 Celluloid and Cinematograph Film Act 1922 s 2(1)(b).

6 Ibid s 2(2)(a) (amended by the Health and Safety (Miscellaneous Provisions) (Metrication etc) Regulations 1992, SI 1992/1811, reg 3(1), Sch 1 Pt I).

7 Celluloid and Cinematograph Film Act 1922 s 2(2)(b).

UPDATE

451-457 Premises for Storage of Celluloid Film

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/7. PREMISES FOR STORAGE OF CELLULOID FILM/453. Use of premises.

453. Use of premises.

No premises¹ may be used for any purpose to which the Celluloid and Cinematograph Film Act 1922 applies² if they are situated underneath premises used for residential purposes³ or are so situated that a fire occurring in them might interfere with the means of escape from the building of which they form part or from any adjoining building⁴. Nor may premises which form part of a building be so used unless that part is either:

- 399 (1) separated from any other part of the building by fire-resisting partitions (including fire-resisting ceilings and floors) and fire-resisting self-closing doors⁵; or
- 400 (2) so situated and constructed that a fire occurring in it is not likely to spread to other parts of the building, and the use is sanctioned in writing by the local authority⁶ and any conditions attached to the sanction are complied with⁷.

Premises may also not be so used unless (a) they are provided with such means of escape in case of fire as the local authority may reasonably require, and such means of escape are maintained in good condition and free from obstruction⁸; and (b) certain regulations⁹, which contain detailed provisions for the keeping and storing of raw celluloid and cinematograph film and the use of cinematograph or other similar apparatus in such a way as to diminish the risk of fire, are duly observed¹⁰.

1 The term 'premises' has a wide meaning; it includes an artificially formed cave approached by a cutting which is closed by a door: *Gardiner v Sevenoaks RDC* [1950] 2 All ER 84, DC. As to exemptions see para 451 ante.

2 As to the purposes to which the Celluloid and Cinematograph Film Act 1922 applies see para 452 ante.

3 Ibid s 1(1)(c). Section 1(1)(c)-(e) applies to premises which are subject to the Factories Act 1961: see para 451 note 7 ante.

4 Celluloid and Cinematograph Film Act 1922 s 1(1)(d). See note 3 supra.

5 Ibid s 1(1)(e)(i). See note 3 supra.

6 For the meaning of 'local authority' see para 451 note 12 ante.

7 Celluloid and Cinematograph Film Act 1922 s 1(1)(e)(ii). See note 3 supra.

8 Ibid s 1(1)(b).

9 The text refers to the regulations set out in ibid Sch 1 (see para 454 post) (s 1(1)(f)), and regulations made by the Secretary of State with respect to the use upon the premises of any cinematograph or other similar apparatus (s 1(1)(g)). Whereas the Secretary of State formerly had power to make such regulations under s 1(4), Sch 2, those powers were repealed by the Celluloid and Cinematograph Film Act 1922 (Repeals and Modifications) Regulations 1974, SI 1974/1841, reg 2(a), although existing regulations continue in force by virtue of reg 3(2). The Cinematograph Films, Use of Apparatus, Safety Provisions Order 1924, SR & O 1924/403, provides for the construction of projecting apparatus, requires the projector to be fitted with metal boxes to and from which film, limited to 2,000 feet, is to travel mechanically, and requires film not in use to be kept in closed metal boxes, each containing not more than six spools, continues to have effect by virtue of the Celluloid and Cinematograph Film Act 1922 (Repeals and Modifications) Regulations 1974, SI 1974/1841, reg 3(2). As to exemptions see para 451 note 9 ante. The Secretary of State may now make such regulations as health and safety regulations under the Health and Safety at Work etc Act 1974 s 15 (as amended): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 424, 425.

10 Celluloid and Cinematograph Film Act 1922 s 1(1)(f), (g).

UPDATE

451-457 Premises for Storage of Celluloid Film

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/7. PREMISES FOR STORAGE OF CELLULOID FILM/454. Storage of raw celluloid and cinematograph film.

454. Storage of raw celluloid and cinematograph film.

In or in connection with premises where raw celluloid¹ is kept, all such celluloid must be kept or stored in a fire resisting store room², and subject to the regulations applying to such store rooms³.

In or in connection with premises where cinematograph film is kept, stored or manipulated, all stock except when actually being used or manipulated must be kept either in a fire resisting store room and subject to the regulations applying to such store rooms, or in fire resisting receptacles which must not be used for any other purpose and must be plainly marked 'Film'⁴. Every reel of film must, except when required to be exposed for the purposes of the work carried on in the premises, be kept in a separate and properly closed metal box⁵. Not more than 10 reels or 18 kilograms of film may be exposed at any one time⁶. In relation to every room used for the storing or for the examination, cleaning, packing, re-winding or repair of film:

- 401 (1) the room must be used for no other purpose⁷;
- 402 (2) the room must be kept properly ventilated⁸;
- 403 (3) adequate means of extinguishing fire, having regard to the amount of film on the premises, must be kept constantly provided and readily available⁹;
- 404 (4) the furniture and apparatus must be so arranged as to afford free egress to persons in the room in the event of fire¹⁰;
- 405 (5) no open light or fire is allowed¹¹;
- 406 (6) the fittings must, so far as is practicable, be of non-inflammable or fire resisting material¹²;
- 407 (7) the doors must be self-closing, and must, except in the case of sliding doors, be so constructed as to open outwards¹³;
- 408 (8) no person may smoke in or take matches into the room¹⁴;
- 409 (9) there must be kept posted up in large characters in the room: (a) a printed copy of the statutory provisions¹⁵ relating to the premise where cinematograph film is kept and fire resisting store rooms¹⁶; (b) full instructions as to the action to be taken in case of fire¹⁷; and (c) full directions as to the means of escape from the room in case of fire¹⁸.

In or in connection with premises where cinematograph film is kept, stored or manipulated, all celluloid waste and scrap on the premises must be collected at frequent intervals and placed either in a fire resisting store room, or in a strong metal receptacle fitted with a hinged lid and marked 'Celluloid Waste'¹⁹.

1 For the meaning of 'celluloid' see para 451 note 2 ante. For the meaning of 'raw celluloid' see para 451 note 2 ante.

2 The following provision is made in relation to fire resisting store rooms:

52 (1) the store room must be constructed of fire resisting material in such manner as to prevent as far as is reasonably practicable any fire occurring in the store room from spreading to other parts of the premises or to other premises, and any fire occurring outside the store room from reaching its contents (Celluloid and Cinematograph Film Act 1922 s 1, Sch 1 Pt III para 1);

53 (2) the store room must be properly ventilated (Sch 1 Pt III para 2);

- 54 (3) the fittings of the store room must, so far as is practicable, be of non-inflammable or fire resisting material (Sch 1 Pt III para 3);
- 55 (4) adequate means of extinguishing fire must be kept constantly provided and readily available (Sch 1 Pt III para 4);
- 56 (5) no open light and no means of heating must be allowed in the store room (Sch 1 Pt III para 5);
- 57 (6) if electric light is used, all conductors and apparatus must be so constructed, installed, protected, worked and maintained as to prevent danger; vacuum-type lamps only may be used, and must be in fixed positions and fitted with substantial outer protecting globes (Sch 1 Pt III para 6);
- 58 (7) no person may smoke in or take matches into the store room (Sch 1 Pt III para 7);
- 59 (8) the doors of the store room must be self-closing and must be kept securely locked, except when articles are being placed in or removed from there (Sch 1 Pt III para 8);
- 60 (9) the store room must not be used for any purpose other than the keeping of celluloid or cinematograph film, and must be clearly marked 'Celluloid' or 'Film' (Sch 1 Pt III para 9);
- 61 (10) not more than 1 tonne of celluloid and not more than 560 reels or 1 tonne of cinematograph film may be kept in one store room (except that, where a store room is divided into separate compartments by separate fire resisting partitions without any openings in them, each such compartment may, for these purposes, be regarded as a separate store room) (Sch 1 Pt III para 10 (amended by the Health and Safety (Miscellaneous Provisions) (Metrication etc) Regulations 1992, SI 1992/1811, reg 3(1), Sch 1 Pt I));
- 62 (11) when both celluloid and cinematograph film are stored in one store room, the aggregate quantity in the store room must, at no time, exceed 1 tonne (Celluloid and Cinematograph Film Act 1922 Sch 1 Pt III para 11 (amended by the Health and Safety (Miscellaneous Provisions) (Metrication etc) Regulations 1992, SI 1992/1811, Sch 1 Pt I)).

For the meaning of 'cinematograph film' see para 451 note 3 ante.

- 3 Celluloid and Cinematograph Film Act 1922 Sch 1 Pt I.
- 4 Ibid Sch 1 Pt II para 1.
- 5 Ibid Sch 1 Pt II para 2.
- 6 Ibid Sch 1 Pt II para 3 (amended by the Health and Safety (Miscellaneous Provisions) (Metrication etc) Regulations 1992, SI 1992/1811, Sch 1 Pt I).
- 7 Celluloid and Cinematograph Film Act 1922 Sch 1 Pt II para 4(i).
- 8 Ibid Sch 1 Pt II para 4(ii).
- 9 Ibid Sch 1 Pt II para 4(iii).
- 10 Ibid Sch 1 Pt II para 4(iv).
- 11 Ibid Sch 1 Pt II para 4(v).
- 12 Ibid Sch 1 Pt II para 4(vi).
- 13 Ibid Sch 1 Pt II para 4(vii).
- 14 Ibid Sch 1 Pt II para 4(viii).
- 15 Ie ibid Sch 1 Pts II, III (as amended).
- 16 Ibid Sch 1 Pt II para 4(ix)(a).
- 17 Ibid Sch 1 Pt II para 4(ix)(b).
- 18 Ibid Sch 1 Pt II para 4(ix)(c).

19 Ibid Sch 1 Pt II para 5.

UPDATE

451-457 Premises for Storage of Celluloid Film

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/7. PREMISES FOR STORAGE OF CELLULOID FILM/455. Structural alterations and expenses.

455. Structural alterations and expenses.

If an occupier of premises is prevented by any agreement from carrying out any structural alterations which are necessary to enable him to comply with the provisions of the Celluloid and Cinematograph Film Act 1922, and is unable to obtain the consent to those alterations of the person whose consent is necessary under the agreement he may apply¹, in accordance with rules of court, to the county court, and the court, after hearing the parties and any witnesses whom they may desire to call, may make such order setting aside or modifying the terms of the agreement as it considers just and equitable in the circumstances of the case².

Where in any premises any structural or other alterations are required in order to comply with the provisions of the Celluloid and Cinematograph Film Act 1922 and the occupier alleges that the whole or part of the expense of the alterations ought to be borne by the owner, the occupier may apply³, in accordance with rules of court, to the county court, and the court, after hearing the parties and any witnesses whom they may desire to call, may make such order concerning the expenses or their apportionment as the court considers just and equitable in the circumstances of the case, regard being had to the terms of any contract between the parties, or in the alternative the court may, at the request of the occupier, determine the lease⁴.

1 Proceedings are started when the court issues a claim form: see CPR 7.2; and CIVIL PROCEDURE vol 11 (2009) PARA 118.

2 Celluloid and Cinematograph Film Act 1922 s 8(1). Cf the similar provisions of the Factories Act 1961 s 169: see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 870.

3 See note 1 supra.

4 Celluloid and Cinematograph Film Act 1922 s 8(2). Cf the similar provisions of the Factories Act 1961 s 170: see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 871.

UPDATE

451-457 Premises for Storage of Celluloid Film

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/7. PREMISES FOR STORAGE OF CELLULOID FILM/456. Offences.

456. Offences.

In the event of any contravention of the safety provisions¹ relating to the keeping or storing of raw celluloid² or cinematograph film³ in or in connection with any premises, the occupier is guilty of an offence⁴, and in the event of the contravention of any regulations made under those provisions⁵ by any person employed on any premises, that person is guilty of an offence⁶. These offences are punishable in the same manner as offences under health and safety regulations⁷. Health and safety inspectors have power to enter and inspect premises⁸.

1 The provisions of the Celluloid and Cinematograph Film Act 1922 ss 1, 2 (both as amended): see paras 451-453 ante.

2 For the meaning of 'celluloid' see para 451 note 2 ante. For the meaning of 'raw celluloid' see para 451 note 2 ante.

3 For the meaning of 'cinematograph film' see para 451 note 3 ante.

4 Celluloid and Cinematograph Film Act 1922 s 3(1) (amended by the Celluloid and Cinematograph Film Act 1922 (Repeals and Modifications) Regulations 1974, SI 1974/1841, reg 2(b)).

5 As to these regulations see paras 453-454 ante.

6 Celluloid and Cinematograph Film Act 1922 s 3(2) (amended by the Celluloid and Cinematograph Film Act 1922 (Repeals and Modifications) Regulations 1974, SI 1974/1841, reg 2(b)).

7 See the Health and Safety at Work etc Act 1974 ss 33, 53(1), Sch 1; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852.

8 See *ibid* s 20; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 376.

UPDATE

451-457 Premises for Storage of Celluloid Film

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/BUILDING (VOLUME 4(2) (2002 REISSUE))/7. PREMISES FOR STORAGE OF CELLULOID FILM/457. Appeal.

457. Appeal.

Any person aggrieved¹ by any requirement of a local authority², or the refusal of the local authority to grant any sanction, or by the conditions attached to any such sanction, may, within seven days after being notified of the requirement, refusal or conditions, appeal³ to a magistrates' court⁴, which may make such order as appears to it to be just, including an order for the payment of costs⁵.

1 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARA 656.

2 For the meaning of 'local authority' see para 451 note 12 ante.

3 Twenty-four hours' written notice of the appeal and of the grounds of appeal must be given to the local authority: Celluloid and Cinematograph Film Act 1922 s 1(3).

4 See generally MAGISTRATES.

5 Celluloid and Cinematograph Film Act 1922 s 1(3).

UPDATE

451-457 Premises for Storage of Celluloid Film

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.